

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1999 (Chau) – As Amended April 17, 2018

SUBJECT: Local government: public broadband services.

SUMMARY: Establishes net neutrality rules for local agencies that provide broadband services and expands the types of local agencies that may provide broadband infrastructure, services, or both. Specifically, **this bill:**

- 1) States the intent of the Legislature that this bill protect and promote the Internet as an open platform enabling consumer choice, freedom of expression, end-user control, competition, and the freedom to innovate without permission, thereby encouraging the deployment of advanced telecommunications capability and remove barriers to infrastructure investment.
- 2) Prohibits, except for reasonable network management, a local agency insofar as it is engaged in the provision of broadband Internet access service (broadband service) from doing any of the following:
 - a) Blocking lawful content, applications, services, or nonharmful devices;
 - b) Impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device;
 - c) Engaging in paid prioritization;
 - d) Unreasonably interfering with, or unreasonably disadvantaging, either of the following:
 - i) An end user's ability to select, access, and use broadband service or the lawful Internet content, applications, services, or devices of the end user's choice; or,
 - ii) An edge provider's ability to make lawful content, applications, services, or devices available to an end user.
- 3) Allows County Service Areas (CSAs) to provide services and facilities for the acquisition, construction, improvement, maintenance, or operation of broadband service, and requires a CSA that does so to comply with the net neutrality requirements established by this bill.
- 4) Allows an infrastructure financing district (IFD) that finances public capital facilities or projects that include broadband to transfer the management and operation of any broadband facilities that were financed to a local agency that is authorized to provide broadband service, and requires that local agency when providing that service to comply with the net neutrality requirements established by this bill.
- 5) Clarifies that an enhanced infrastructure financing district (EIFD) may finance the acquisition, construction, or improvement of broadband service, allows an EIFD that does so to transfer the management and control of those facilities to a local agency that is authorized

to provide broadband service, and requires that local agency when providing that service to comply with the net neutrality requirements established by this bill.

- 6) Eliminates the following conditions that a community services district (CSD) must meet before and after constructing, owning, improving, maintaining, and operating broadband facilities:
 - a) The condition that a private person or entity is unable or unwilling to deploy broadband service before a CSD may do so;
 - b) The condition that a CSD must first make a reasonable effort to identify a private person or entity willing to deploy service before it does so;
 - c) The condition that the CSD must do one of the following if it later determines that a private person or entity is ready, willing and able to acquire, construct, improve, maintain, and operate broadband facilities and to provide broadband services, and to sell those services at a comparable cost and quality of service as provided by the CSD:
 - i) Diligently transfer its title, ownership, maintenance, control, and operation of those broadband facilities and services at a fair market value to that private person or entity; or,
 - ii) Lease the operation of those broadband facilities at a fair market value to that private person or entity.
- 7) Requires municipal utilities, municipal utility districts (MUDs), and public utility districts (PUDs) that provide broadband service to comply with the net neutrality requirements established by this bill.
- 8) Provides the following definitions:
 - a) "Broadband Internet access service" means a mass-market retail service provided by a local agency in California by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. "Broadband Internet access service" also encompasses any service provided by a local agency in California that provides a functional equivalent of that service or that is used to evade the protections set forth in this bill;
 - b) "Edge provider" means any individual or entity that provides any content, application, or service over the Internet, and any individual or entity that provides a device used for accessing any content, application, or service over the Internet to an end user;
 - c) "End user" means any individual or entity in California that uses a broadband Internet access service that is provided by a local agency;
 - d) "Fixed broadband Internet access service" means any broadband service that serves end users primarily at fixed endpoints using stationary equipment. "Fixed broadband Internet

access service" includes fixed wireless services, including fixed unlicensed wireless services, and fixed satellite services;

- e) "Local agency" means any agency of local government authorized by any other law to provide broadband service, including a city, a CSA, a CSD, a PUD or a MUD;
- f) "Mobile broadband Internet access service" means any broadband service that serves end users primarily using mobile stations;
- g) "Network management practice" means a practice that has a primarily technical network management justification, but does not include other business practices;
- h) "Paid prioritization" means the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, that either is in exchange for consideration, monetary or otherwise, from a third party; or, is done to benefit an affiliated entity; and,
- i) "Reasonable network management" means a network management practice that is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband service.

EXISTING LAW:

- 1) Authorizes, pursuant to the CSA Law, a CSA to provide any governmental services and facilities within the CSA that the county is authorized to perform, and that the county does not perform to the same extent on a countywide basis, and expressly authorizes a CSA to provide specified services and facilities, including, among others, television translator services and low-power television services.
- 2) Authorizes any municipal corporation to acquire, construct, own, operate, or lease any public utility, and provides that "public utility" for these purposes means to supply the inhabitants of that municipal corporation with specified services, including a means of communication.
- 3) Authorizes a MUD and a PUD to acquire, construct, own, operate, control, or use works for supplying the inhabitants of those districts with specified services, including a means of communication.
- 4) Authorizes an IFD to finance public capital facilities of communitywide significance that provide significant benefits to an area larger than the area of the district, including, among others, public capital facilities or projects that include broadband.
- 5) Authorizes the legislative body of a city or a county to establish an EIFD to finance public capital facilities or other specified projects of communitywide significance.
- 6) Authorizes a CSD to construct, own, improve, maintain, and operate broadband facilities and to provide broadband services if the following conditions are met:
 - a) A private person or entity is unable or unwilling to deploy broadband service; and,

- b) The CSD has first made a reasonable effort to identify a private person or entity willing to deploy broadband service.
- 7) Requires a CSD that has constructed and deployed broadband facilities and services to do one of the following if it later determines that a private person or entity is ready, willing and able to acquire, construct, improve, maintain, and operate broadband facilities and to provide broadband services, and to sell those services at a comparable cost and quality of service as provided by the CSD:
- a) Diligently transfer its title, ownership, maintenance, control, and operation of those broadband facilities and services at a fair market value to that private person or entity; or,
 - b) Lease the operation of those broadband facilities at a fair market value to that private person or entity.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill establishes net neutrality rules for local governments that provide broadband services, expands the types of local agencies that may provide broadband infrastructure or services to include CSAs and EIFDs, and removes requirements on CSDs to seek out a private provider before entering the broadband market and to sell or lease their broadband facilities and services to a private provider if one subsequently enters the market. This bill is sponsored by the author.
- 2) **Author's Statement.** According to the author, "The recent action by the Federal Communications Commission (FCC) has rekindled new the idea that local governments ought to play a more active role in building out locally owned broadband networks. For example, the City of San Francisco recently announced in January of 2018 that it plans to build and operate, through a public private partnership, its own municipal Internet network with mandated net-neutrality. Indeed, California law authorizes municipal utility districts and public utility districts to operate their own broadband networks.

"In contrast to municipal and public utility districts, California law provides other forms of independent local government, like CSD's, limited or authority to provide broadband services. For example, a CSD can initially provide the service, but has to cede authority to a private entity if/when a private entity is willing to deploy the service. This creates a disadvantage for rural areas that may want to establish their own broadband networks where only 43 percent of the population has access to broadband in their households.

"Additionally, for the 3.5 million people in California without access or that only have access to one wired provider, allowing MUDs, PUDs, and CSDs to offer broadband internet service may not only provide them internet access for the first time, but also provide them with a choice in their service provider, thereby 'increasing access, encouraging competition, fostering consumer choice, and driving...economic development,' as indicated in a 2015 Obama administration report.

"As locally owned broadband networks become an alternative for consumers, the State should uphold the tenets of an open Internet by requiring adherence to the core principles of net neutrality."

- 3) **Background.** Net neutrality, also known as an open internet, is the principle that internet service providers (ISPs) should not discriminate against lawful content and should, instead, treat all internet traffic the same regardless of source. Under net neutrality principles, ISPs cannot block, impair or degrade access, or create special "fast lanes" for the ISP's preferred content.
- 4) **Obama Administration 2015 Open Internet Order.** In February 2015, the FCC adopted Open Internet rules that established three "bright-line" rules banning certain practices that the FCC considers to harm open access to the internet. The bright-line rules include:
 - a) **No Blocking.** Broadband providers may not block access to legal content, applications, services, or non-harmful devices;
 - b) **No Throttling.** Broadband providers may not impair or degrade lawful internet traffic on the basis of content, applications, services, or non-harmful devices.
 - c) **No Paid Prioritization.** Broadband providers may not favor some lawful internet traffic over other lawful traffic in exchange for consideration of any kind.

The FCC voted in December of 2017 to repeal these rules, which is expected to take effect this summer.

- 5) **CSD Authority to Provide Broadband Service.** SB 1191 (Alquist), Chapter 70, Statutes of 2008, allowed CSDs to provide broadband services, which was a recommendation of the California Broadband Task Force. This authorization was contingent on the existing statutory protections giving private providers the first chance to deliver, plus a later opportunity to take over a community's public system. At the time, these provisions were described as "checks and balances against unjustified public intrusion into private investments."
- 6) **Related Legislation.** SB 460 (De León) adopts the main components of the FCC's 2015 Open Internet Order, provides persons damaged by violations of these rules access to the enforcement mechanisms provided by the Consumer Legal Remedies Act, and prohibits state agencies from contracting with such providers unless they commit to not engage in the prohibited practices. SB 460 is pending at the Assembly Desk.

SB 822 (Wiener) prohibits a number of practices by private ISPs, including net neutrality components, authorizes the Attorney General to enforce those prohibitions and review complaints, and prohibits public entities (including local agencies) from purchasing, or providing funding for the purchase of, any fixed or mobile broadband services that violate these prohibitions. SB 822 is set for hearing on April 24, 2018, in the Senate Judiciary Committee.

- 7) **Policy Consideration.** As noted above, there are two bills being considered by the Legislature this year that address net neutrality requirements for private ISPs. The

Committee may wish to discuss the potential consequences if this bill passes and the other bills fail, and whether such an outcome could create a competitive disadvantage for local government broadband providers if they have to comply with net neutrality rules but their private competitors do not.

- 8) **Arguments in Support.** The Electronic Frontier Foundation (EFF), in support, states, "The EFF strongly supports the goals of AB 1999, which is to allow local residents to fully take their Internet future into their own hands in order to remain competitive in the 21st century. Across the nation publicly deployed infrastructure and public-private partnerships have resulted in gigabit fiber-optic networks where residents now enjoy future-proof access to the Internet. Too often, if left solely to large incumbent providers, communities that are not high priorities for the private sector to invest in are left with decades-old technology at unaffordable rates. While California generally allows local governments to build Internet infrastructure, the specific changes sought by AB 1999 would ensure the public retains ownership of their own willingness to take on risks and keep the benefits in local hands."
- 9) **Arguments in Opposition.** None on file.
- 10) **Double-Referral.** This bill is double-referred to the Communications and Conveyance Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Special Districts Association
Electronic Frontier Foundation

Opposition

None on file

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