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AUGUST 7, 2013 5:10 PM

Chong: Broadband Bill Stalls With Cable Industry Opposition

By Rachele Chong posted on August 7, 2013 in [Contributors](#), [News](#)

The state Legislature is back this week, and what hangs in the balance is an important bill – Senate Bill 740 (Padilla) — that will significantly impact the future of broadband access in rural areas of the state and whether public housing will get new funding for broadband access.

After a resounding “yes” vote in the state Senate (36-1-2), SB740 — a bill proposing to expand eligibility requirements and add funding for the California Advanced Services Fund (CASF) — failed to pass out of the Assembly Utilities and Commerce Committee. On July 1, 2013, the bill stalled with a vote of 5 ayes, 3 nays, and 7 abstentions. The California Cable Telecommunications Association (CCTA), which represents the majority of the state’s cable interests, opposes the bill saying that funds should be used only for areas that do not currently have broadband connectivity, instead of areas are “underserved” which means they have slow, outdated infrastructure. Although there is some dispute over the accuracy of reports on how many communities remain without broadband connectivity, other incumbent providers such as AT&T and Verizon have not opposed the bill. Padilla’s office says he is now considering amendments to address cable industry concerns, which include possible reference to current CPUC definitions of “unserved” and “underserved.”

SB740 modifies the CASF eligibility requirements to let the California Public Utilities Commission (CPUC) award funding to entities such as Wireless Internet Service Providers. These so-called “WISPs” are among those who may be best able to serve remote and rural areas in a cost effective way.

Currently, the CPUC may only award CASF funds to “telephone corporations” or holders of wireless communications certificates granted by the CPUC. The bill originally proposed to allow surcharges to be collected at the rate of \$25 million per year from 2015-2020, which would add \$125 million to the fund. To the dismay of rural broadband interests, this figure now has been amended down to \$90 million. The state goal is to reach 98% infrastructure access coverage.

Consistent with prior CASF goals set by the CPUC, the program first prioritizes funding for “unserved” areas defined as areas without any wired or wireless Internet access or only dial up Internet access. The CPUC next allows funding applications for “underserved” areas with slow Internet speeds not meeting the CPUC’s broadband benchmark speeds of 6 megabits per second (Mbps) download and 1.5 Mbps upload. Under SB740, the CPUC would be required to review actual levels of existing broadband service before it could award CASF funding to an applicant. The CASF dollars subsidize but do not pay all costs of a broadband project; the applicant must find matching funds to show local commitment to a project.

Another broadband-related bill, AB1299 (Bradford, 2013), hangs in the balance with SB740. AB1299 authorizes the CPUC to award CASF grants for deployment and adoption of broadband services in publicly-supported housing communities, but relies on the passage of SB740 for funding. This program would address other digital divide issues, including access to broadband in multi dwelling units, and affordability of Internet service for low income persons.

Cable Opposes SB740 as Overbuilding

“CCTA supports the public policy goal of providing broadband access to all Californians, as evidenced by the billions of private capital invested daily,” said Carolyn McIntyre, President of the California Cable & Telecommunications Association. “We believe that CASF funding should be used to build broadband infrastructure projects in unserved areas of California. The state’s priority should be providing funding for projects to ensure that all Californians have access to broadband before spending funding to increase speeds

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for consumers that do.”

McIntyre further points out that the majority of funding from the CASF program has, according to the CPUC’s CASF Annual Report, gone to underserved areas (\$38.77 million) and not to unserved areas (\$2.31 million).

Further, CCTA opposes expanding the eligibility for CASF grants to any entity not a telephone corporation in an underserved area. The cable industry has labeled this ‘overbuilding’ (referring to companies who build new Internet infrastructure where existing infrastructure exists) and vigorously objects to competition with a subsidized non-telephone corporation entity.

“If the projects are not limited to an unserved area, the entity may seek to use the facility to provide a competitive broadband service in an area that is currently served by an existing broadband provider that build its broadband system with private capital,” explained McIntyre. “And while competition for broadband services may be good, that competition should not be funded with government subsidies, in this case CASF funding.”

Rural and Digital Divide Broadband Leaders Rally to Find Compromise

Rural regional broadband consortia — such as the Broadband Alliance of Mendocino County, Access Sonoma Broadband, Central Sierra Connect, Northeastern California Connect Consortia and Upstate California Connect Consortia- and the non-profit California Emerging Technology Fund led by Sunne Wright McPeak are supporters of SB740 and have taken issue with the cable industry’s position. Most alarming to them was the removal of the \$125 million in additional CASF funding after the bill was introduced. It appears the funding was removed while the CPUC reviewed pending CASF applications to see how many of the unserved and underserved areas might be covered by these pending proposals that conform with the rules and have chances of approval. The new funding has since been replaced by the author at \$90 million. Second, they are concerned regarding cable’s request that the new funding be limited to only “unserved” areas. Third, they support the recommendation of the CPUC to allow other entities other than telephone corporations and certificated wireless carriers apply for the CASF funds.

The rural broadband leaders state that incumbent Internet providers (primarily rural telephone and cable companies) have declined to serve rural and remote communities with adequate broadband speeds due to the high cost of infrastructure and low return on investment in these areas. Rural representatives say they have met repeatedly with their local Internet providers to ask for upgrades to adequate broadband speeds and projects to unserved areas, to no avail.

“Many residents of the Mother Lode Region, located in the central Sierra foothills, continue to struggle with inadequate broadband internet connections,” said Darrell Slocum, of the Central Sierra Connect group. “Entire neighborhoods, lacking a hard wired connection to the home, are relying on substandard satellite service. Our area needs additional infrastructure investment to improve quality of life, economic vitality, health and safety, educational opportunities, and access to remote health care via telemedicine. Adding additional monies to SB740 creates the possibility for our area to help ourselves. Isn’t this precisely what CASF was created to do?”

Rural representatives argue it is critical to open up CASF program eligibility to entities like wireless Internet Service Providers or local governmental agencies (such as the rural electric coop, or a local agency, or a local community college or school district), so they can obtain CASF dollars to subsidize bringing broadband of adequate speeds to their rural communities. They say that current incumbent Internet providers have declined to build adequate broadband to their communities yet will expend significant lobbying dollars to block efforts of those who want to bring Internet service to these rural communities.

“Incumbents have stated rural expansion does not fit their economic model,” said Jim Moorehead, of the Broadband Alliance of Mendocino County. “The current incumbents have access to federal and state funds; unfortunately, they are not seeking grants or subsidies because they do not appear to be interested in fully serving rural California.”

At the early July Assembly hearing on SB740, the cable industry pointed to the CPUC’s CASF Annual Report, showing that of the \$41.08 million in CASF grant funding awarded, only \$2.31 million was authorized for projects in unserved areas, while \$38.77 million went to projects in underserved areas. CCTA’s McIntyre notes that the FCC acknowledges in its February 2013 Broadband Speed guide, that “services at speeds much slower than the CPUC’s definition are capable of providing sufficient speed for nearly every broadband application other than high definition two-way video conferencing — further supporting a policy that CASF should only be available to fund deployment of broadband in “unserved” communities as opposed to communities that already



have service.” A representative of a wireline broadband company put it this way: not everyone needs a sports car in their garage when a sedan will do.

According to rural representatives, cable’s position to limit the CASF program to only “unserved” areas causes huge problems for rural communities, who don’t have Internet access points close enough to their rural communities to hook into without building some “middle mile” facilities in underserved areas. While California was very fortunate to obtain two large projects funded by federal American Recovery and Reinvestment Act (ARRA) for the Central Valley and the Eastern Sierra between Carson City, Nevada and Barstow, California, most California rural areas got nothing. Mike Nicholls of Access Sonoma Broadband reported that last week, the Sea Ranch Association in northern Sonoma County received quotes of \$29,000 per month for Internet backhaul.

“Rural build outs for ISP’s are dependent upon affordable backhaul,” said Nicholls, of Access Sonoma Broadband. “The single largest need in Northern California is an affordable middle mile network that not only connects unserved but underserved households as well. 27% of the state has not received state or federal broadband grants – why not finish the job? Further tribal communities, research and education establishments, and libraries all need an affordable Internet service that meets current as well as future needs.”

Rural broadband leaders and CETF challenge the broadband map data that the incumbent broadband providers provide to the CPUC and the Federal Communications Commission as being up to 50% inaccurate, particularly as to rural areas. CETF’s McPeak asserts that errors arise in the broadband mapping because: (1) data is submitted by industry which assert that households are “served” if they are a certain distance from a central office for DSL lines or within a given radius for wireless technology without taking into account actual terrain or buildings, trees and mountains that block the signal; and (2) whatever is selected as the map “cell “ size, if just one household is served in that cell, then the provider lists *all* households in that vicinity to have access regardless if this is actually the case. Some rural broadband consortia are providing the CPUC GIS mapping staff with on-the-ground samplings of data to demonstrate that the data for their particular communities on the broadband map are inaccurate and overstate existing broadband coverage by up to 50%. SB740 would give each applicant and any party challenging the application the opportunity to demonstrate actual levels of broadband service in the project area.

Cable also pointed to the CPUC’s CASF Annual report stating there are only 12,448 households that are “unserved” in California. To rebut, McPeak presented CETF data that at least 225,000 households still are unserved by broadband in the state. Supporters of SB740 also finds curious the cable industry’s argument warning of allowing “overbuilding” in areas already served by Internet providers but at speeds below the CPUC’s benchmark speed of 6 Mbps. While the local telco or rural cable company has deployed Internet, the slow speeds make users unable to download video without waiting long periods of time or having the connection drop.

“These build outs would take place on the carrier’s schedule, which in many cases [for rural], has proven to be never,” said Moorehead.

If SB740 Does Not Pass, California’s Broadband Ranking At Risk

As this legislative fray continues, the fact remains that California, the home to Silicon Valley and a leading mobile app haven, does not rank in the top ten states with the best average broadband speeds in the nation, according to the latest Akamai State of the Internet report for 3Q 2012. Akamai shows California as 16th in the nation, with average speeds of 7.68 Mbps.

The Akamai report has some good news: the average broadband connection speed increased in 43 states. Private industry indeed has stepped up to the plate to invest billions of dollars to upgrade broadband technology across the nation. But is this investment only in urban areas, and not rural areas? Notably, California did not rank in the top ten states with the fastest connection speeds. California

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ranked 16 with an average speed of 7.68 Mbps. The five states with the top speeds were: Delaware — 10.88 Mbps; District of Columbia — 10.75 Mbps; New Hampshire — 10.41 Mbps; Vermont — 10.38 Mbps; and Rhode Island — 9.13 Mbps. The two states with the slowest broadband speeds were Arkansas and Alabama with 3.74 Mbps average speed. SB740 may be brought up for reconsideration by the Assembly U&C Committee in early August. Supporters of the bill are working to encourage the seven abstaining Assembly members (Bonilla, Buchanan, Fong, Garcia, Gorell, Roger Hernández, Jones) and the three nay votes (Chávez, Beth Gaines, Patterson) to agree to reconsider the broadband bill. (The aye votes were Bradford, Quirk, Rendon, Skinner, Williams.) The author is working to find amendments acceptable to the cable industry to allow the bill to go forward. The future of rural broadband is at stake.

Top 20 Internet speeds in the U.S. by state, sorted from fastest to slowest.

Rank	State	Mbps
1.	Delaware	10.88
2.	District of Columbia	10.75
3.	New Hampshire	10.41
4.	Vermont	10.38
5.	Rhode Island	9.13
6.	Massachusetts	9.12
7.	Connecticut	9.10
8.	Utah	9.07
9.	Washington	8.51
10.	Virginia	8.44
11.	New York	8.25
12.	Pennsylvania	8.07
13.	Indiana	7.94
14.	Oregon	7.86
15.	New Jersey	7.79
16.	California	7.68
17.	Minnesota	7.48
18.	South Dakota	7.46
19.	Wisconsin	7.41
20.	North Carolina	7.41

Source: Akamai State of the Internet Report, data for 3Q of 2012.

States 21-50 were removed from the list above.

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[Ed. Note: Rachelle Chong serves as Chair, Board of Experts, for California Emerging Technology Fund.]

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About Rachelle Chong

Rachelle Chong is a nationally known expert on telecommunications, broadband, wireless communications, cable, digital literacy, public safety communications, renewable energy and smart grid policy. She is a former Commissioner of the Federal Communications Commission (Clinton appointee) and the California Public Utilities Commission (Schwarzenegger appointee). Prior to that, she has been Vice President, Government Affairs for Comcast California Region, Special Counsel for the CA Technology Agency, a partner at two international law firms (Graham & James and Coudert Brothers), and an entrepreneur. Rachelle is delighted to brush off her Journalism degree from Cal Berkeley, and serve as a columnist for Techwire, focusing on federal policies and the San Francisco and Silicon Valley tech/telecom beats.