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Broadband or Bust: California’s Plan to Close the Digital Divide

Steve Zelezny*

Code Sections Affected

Government Code §§ 6547.7 and 53167 (amended), § 11549.50 (added)
Public Resources Code § 21080.51 (added)
Public Utilities Code §§ 281, 912.2, and 914.7 (amended), § 281.2 (added)
SB 156 (Skinner); 2021 STAT. CH. 112

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* J.D. Candidate, University of the Pacific, McGeorge School of Law, to be conferred May 2024; B.A. Public Relations, University of Southern California, 2013. First, thank you to my family, especially my parents, for their constant support and encouragement throughout my law school journey. I would also like to thank the entire Law Review staff for their guidance throughout this process. Lastly, I dedicate this article to my late grandmother, Betty, who instilled in me a love for learning and who always supported my educational dreams.

I. INTRODUCTION

In California, Monterey County Supervisor Luis Alejo witnessed firsthand the challenges students in his community faced during the COVID-19 pandemic.¹ One morning, Alejo tweeted a photo of two girls sitting outside a Taco Bell in Salinas—using the fast-food chain’s free Wi-Fi to finish homework.² In an interview with CNN, Alejo said, “California is the technology capital of the world, this is an embarrassment.”³ These obstacles reflect a deeper divide in the digital age.⁴ Statewide school shutdowns during the pandemic further perpetuated this divide, when one in four K-12 students in California could not access high-speed internet at home.⁵ Further, an estimated sixteen million public school students in the United States either stay in homes with inadequate internet connection or have devices unequipped for remote learning.⁶

In response, California Governor Gavin Newsom called on industry leaders to help vulnerable students access basic tools for online learning.⁷ Companies such as T-Mobile, Amazon, and Apple soon provided internet access for hundreds of thousands of households.⁸ For students like those at Traver Joint Elementary, a rural school in Tulare County, California, these tablets and hotspot devices provided a lifeline.⁹

In July 2021, Governor Newsom visited Traver Joint Elementary to sign into law Senate Bill (SB) 156, a \$6 billion investment to expand the State’s broadband fiber infrastructure.¹⁰ SB 156 became the largest investment in public broadband

1. Alisha Ebrahimji, *School Sends California Family a Hotspot After Students Went to Taco Bell to Use Their Free WiFi*, CNN (Aug. 31, 2020), <https://www.cnn.com/2020/08/31/us/taco-bell-california-students-wifi-trnd/index.html> (on file with the *University of the Pacific Law Review*).

2. *Id.*

3. *See id.* (statement of Supervisor Alejo) (“Salinas Valley is 45 minutes from Silicon Valley and here we have such a huge divide that’s gone on for years but now it’s only amplified because of this pandemic.”).

4. *See id.* (“[T]he digital divide is a problem throughout the entire country.”).

5. *Id.*

6. *Id.*

7. *See Governor Newsom Announces Cross-Sector Partnerships to Support Distance Learning and Bridge the Digital Divide*, OFF. GOVERNOR GAVIN NEWSOM (Apr. 20, 2020), <https://www.gov.ca.gov/2020/04/20/governor-newsom-announces-cross-sector-partnerships-to-support-distance-learning-and-bridge-the-digital-divide/> (on file with the *University of the Pacific Law Review*) (statement of Governor Newsom) (“[I]t is imperative that California addresses the inequities in access to computers, technology tools and connectivity to ensure that online learning can in fact reach all of California’s children.”).

8. *Id.*

9. *See* Liz Kern, *Gov. Newsom Visits Traver Elementary in Tulare County, Signs Law Expanding Broadband Internet Service*, KMJ NOW (July 20, 2021), <https://www.kmjnow.com/2021/07/20/gov-newsom-visits-traver-elementary-in-tulare-county-signs-law-expanding-broadband-internet-service/> (on file with the *University of the Pacific Law Review*) (reporting Traver Elementary distributed hotspot devices to students to have remote internet access during the pandemic).

10. *Governor Newsom Signs Historic Broadband Legislation to Help Bridge Digital Divide*, OFF. GOVERNOR GAVIN NEWSOM (July 20, 2021), <https://www.gov.ca.gov/2021/07/20/governor-newsom-signs-historic-broadband-legislation-to-help-bridge-digital-divide/> (on file with the *University of the Pacific Law Review*).

infrastructure in the country.¹¹ SB 156 seeks to address California’s digital divide holding back the State’s communities in a technology-centered economy.¹² To achieve this goal, SB 156 prioritizes the construction of broadband networks in completely unserved areas, as well as underserved areas with inadequate speeds.¹³ SB 156 takes a transformative step towards bringing equitable high-speed broadband to all Californians in the 21st century.¹⁴ In order to ensure universal access, however, legislation must enable strong public oversight over broadband adoption.¹⁵ Particularly, policymakers should supplement SB 156 with a new bill encouraging municipal broadband and mandating established providers to offer affordable access to low-income households.¹⁶

II. LEGAL BACKGROUND

President Joe Biden signed the American Rescue Plan Act (ARPA) into law in March 2021—spurring broadband investments across the country.¹⁷ As part of ARPA, Congress authorized \$7 billion for the Emergency Connectivity Fund (ECF).¹⁸ ECF reimbursed eligible schools for the costs of tools and services

11. See *State Legislature Passes Historic \$6 Billion Broadband Investment Agreement*, LEAGUE CAL. CITIES (July 15, 2021), <https://www.calcities.org/news/post/2021/07/15/state-passes-historic-6-billion-broadband-investment-agreement> (on file with the *University of the Pacific Law Review*) (stating that, at \$6 billion, “SB 156 is the largest public broadband infrastructure investment in the country”).

12. See *Governor Newsom Signs Historic Broadband Legislation to Help Bridge Digital Divide*, *supra* note 10 (“[T]he state is committed to addressing the challenges laid bare by the pandemic, including the digital divide holding back too many communities in a state renowned for its pioneering technology and innovation economy.”).

13. See *State Legislature Passes Historic \$6 Billion Broadband Investment Agreement*, *supra* note 11 (mentioning the bill prioritizes the construction of broadband networks “in unserved areas, as well as those with lower speeds uncondusive to education, commerce, and video conferencing”).

14. See Chao Liu, *California Bill Would Make New Broadband Networks More Expensive*, ELEC. FRONTIER FOUND. (May 26, 2022), <https://www.eff.org/deeplinks/2022/05/california-bill-would-make-new-broadband-networks-more-expensive> (on file with the *University of the Pacific Law Review*) (adding SB 156 will “help bring every Californian affordable fiber internet access”).

15. See GARRETT STRAIN ET AL., HAAS INST., AT&T’S DIGITAL DIVIDE IN CALIFORNIA 6 (2017) (“Public oversight and intervention is needed to ensure universal and affordable access to high-speed communications services.”).

16. See Kevin Schwartzbach, *Should States Fund Municipal Broadband and Cooperatives?*, GOVERNING (Mar. 28, 2022), <https://www.governing.com/now/should-states-fund-municipal-broadband-and-cooperatives> (on file with the *University of the Pacific Law Review*) (adding that “states can take a more proactive role” by “fund[ing] feasibility studies for municipalities or utility cooperatives interested in building their own broadband networks”); see also STRAIN ET AL., *supra* note 15, at 6 (“Policymakers must hold network carriers accountable to meet deployment benchmarks to ensure that essential services like high-speed broadband are provided in an affordable and equitable way.”).

17. See Kevin Taglang, *What the American Rescue Plan Is Doing for Broadband*, BENTON INST. (March 15, 2022), <https://www.benton.org/blog/what-american-rescue-plan-doing-broadband> (on file with the *University of the Pacific Law Review*) (describing broadband as playing a “big role” in the ARPA).

18. *Helping Schools and Libraries Close the Homework Gap*, FCC, <https://www.fcc.gov/emergency-connectivity-fund> (last visited June 15, 2022) (on file with the *University of the Pacific Law Review*).

associated with remote learning.¹⁹ ARPA also provided more than \$300 billion to state and local governments to assist economic recovery efforts.²⁰ Twenty states utilized these funds to expand broadband access.²¹ President Biden later signed the Infrastructure Investment and Jobs Act (IIJA).²² This once-in-a-generation investment in the nation's aging infrastructure allocated another \$65 billion towards deploying statewide broadband networks and lowering prices for internet service.²³

Section A discusses the California Legislature's historically passive approach to overseeing broadband.²⁴ Section B covers the rise of broadband technology in the United States.²⁵ Section C describes the ongoing challenges preventing equitable internet access.²⁶ Section D explains the events leading up to California's landmark investment in 21st-century broadband infrastructure.²⁷

A. California's Mixed History with Broadband

California's interest in supporting the deployment of universal broadband is not new.²⁸ In 2007, the state's broadband market regulator, the California Public Utilities Commission (CPUC), established the California Advanced Series Fund (CASF).²⁹ CASF supports broadband projects in unserved areas that for-profit Internet Service Providers (ISPs), notably AT&T and Comcast, neglect.³⁰ The California Legislature supplemented these efforts by passing SB 1462 in 2010—creating the California Broadband Council (CBC).³¹ The CBC is responsible for

19. *See id.* (“ECF . . . will help close the Homework Gap for students who currently lack necessary Internet access or the devices they need to connect to classrooms.”).

20. Taglang, *supra* note 17.

21. *Id.*

22. Jim Tankersley, *Biden Signs Infrastructure Bill, Promoting Benefits for America*, N.Y. TIMES (Nov. 15, 2021), <https://www.nytimes.com/2021/11/15/us/politics/biden-signs-infrastructure-bill.html> (on file with the *University of the Pacific Law Review*).

23. *Fact Sheet: The Bipartisan Infrastructure Deal*, WHITE HOUSE (Nov. 6, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/06/fact-sheet-the-bipartisan-infrastructure-deal/> (on file with the *University of the Pacific Law Review*).

24. *Infra* Section II.A.

25. *Infra* Section II.B.

26. *Infra* Section II.C.

27. *Infra* Section II.D.

28. *See CASF Background and History*, CAL. PUB. UTILS. COMM'N, <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/california-advanced-services-fund/casf-background-and-history> (last visited June 15, 2022) (on file with the *University of the Pacific Law Review*) (adding that in 2008 CPUC established the California Advanced Services Fund).

29. *Id.*

30. *See id.* (describing the \$100 million funding as supporting projects that “provided broadband services to areas currently without broadband access”); *see also* Ernesto Falcon, *California's Broadband Fund Ignores Fiber and Favors Slow DSL*, ELEC. FRONTIER FOUND. (Feb. 19, 2020), <https://www.eff.org/deeplinks/2020/02/californias-broadband-fund-ignores-fiber-and-favors-slow-dsl> (on file with the *University of the Pacific Law Review*).

31. *About Us*, CAL. BROADBAND COUNCIL, <https://broadbandcouncil.ca.gov/about-us/> (last visited July 13,

ensuring coordination across state agencies to facilitate expansion of broadband in the state’s unserved areas.³² However, private ISPs lobbied successfully against regulation of the telecom industry.³³ In 2012, the Legislature passed SB 1161—removing CPUC’s authority to ensure ISPs provide reliable broadband service in rural areas.³⁴

Under public pressure, the Legislature reclaimed authority over the deployment of broadband.³⁵ First, the Legislature did not renew SB 1161—restoring CPUC’s regulatory authority over ISPs in 2019.³⁶ Then, in 2018, former Governor Jerry Brown signed AB 1999, which eased restrictions for local governments seeking to improve local connectivity.³⁷ Empowering communities to build their own networks, AB 1999 was a prelude to the broadband competition to come.³⁸

B. The Broadband Boom

Starting in 2004, more people in the United States accessed broadband internet than dial-up—the preferred form of internet connection throughout the 1990s.³⁹ While dial-up is slow and relies on an existing phone line for internet connection, broadband has greater speeds and stays connected.⁴⁰ The Federal Communications Commission (FCC) currently defines acceptable broadband internet connections

2022) (on file with the *University of Pacific Law Review*).

32. *Id.*

33. See Leticia Miranda, *AT&T’s Deregulation Campaign*, NATION (June 10, 2013), <https://www.thenation.com/article/archive/atts-deregulation-campaign/> (on file with the *University of the Pacific Law Review*) (noting AT&T filed a petition with the FCC that “reflects many of the same principles as the state-level model bills, which strip states of any enforcement power over service quality and prices”).

34. *Id.*

35. See Ernesto Falcon, *Victory! California’s Legislature Pulls AT&T and Comcast Bill That Protected Their Monopolies*, ELEC. FRONTIER FOUND. (Sept. 10, 2019), <https://www.eff.org/deeplinks/2019/09/victory-californias-legislature-pulls-att-and-comcast-bill-protected-their> (on file with the *University of the Pacific Law Review*) (“A.B. 1366, a bill that would have protected their broadband monopolies . . . will not move forward this year.”).

36. *Id.*

37. See Lisa Gonzalez, *Governor Signs Bill Eliminating Restrictions for Rural Community Broadband*, CMTY. NETWORKS (Oct. 2, 2018), <https://muninetworks.org/content/governor-signs-bill-reducing-restrictions-rural-community-broadband> (on file with the *University of the Pacific Law Review*) (“[L]awmakers sent a message to big cable and telephone companies that they are no longer willing to bend over backwards to protect incumbent monopolies that ignore their rural constituents.”).

38. See Ernesto Falcon, *California’s Legislature Seeks to Protect Network Neutrality and Promote ISP Competition*, ELEC. FRONTIER FOUND. (Apr. 3, 2018), <https://www.eff.org/deeplinks/2018/04/californias-legislature-seeks-protect-network-neutrality-and-promote-isp> (on file with the *University of the Pacific Law Review*) (adding that the passage of AB 1999 makes it “easier for local governments to engage in community broadband projects to give their residents choice and competition in the ISP market”).

39. Mike Murphy, *From Dial-Up to 5G: A Complete Guide to Logging on to the Internet*, QUARTZ (Oct. 29, 2019), <https://qz.com/1705375/a-complete-guide-to-the-evolution-of-the-internet/> (on file with the *University of the Pacific Law Review*).

40. *Id.*

as those providing twenty-five megabytes per second (mbps) download speeds.⁴¹ According to the Government Accountability Office (GAO), however, the FCC's broadband standards are overdue for an update.⁴² GAO argues small businesses today—especially those leveraging mobile applications—need higher broadband speeds.⁴³

Today, fiber-optic internet is becoming the new standard in broadband.⁴⁴ Fiber-optic cables produce a stronger signal than the copper wires powering cable internet, reaching speeds of one gigabyte per second (gbps).⁴⁵ However, given the installation costs, larger ISPs prioritize building fiber networks in urban areas.⁴⁶ The FCC estimated it would cost \$80 billion to deploy fiber to the entire country.⁴⁷ IJJA moves closer to universal broadband by prioritizing its expansion into rural areas.⁴⁸ IJJA's funding may also encourage local ISPs to build fiber infrastructure in rural communities that larger providers avoid.⁴⁹

41. See Nathaniel Mott, *FCC's Definition of Broadband Is Too Slow, U.S. Watchdog Says*, PCMAG (July 8, 2021), <https://www.pcmag.com/news/fccs-definition-of-broadband-is-too-slow-us-watchdog-says> (on file with the *University of the Pacific Law Review*) (“This definition was introduced by then-FCC Chairman Tom Wheeler in 2015, who said at the time that the commission’s previous requirements of 4Mbps downloads and 1Mbps uploads established in 2010 were outdated.”).

42. See *id.* (“The GAO says that ‘much of the literature’ it’s reviewed suggests the current parameters ‘are likely too slow to meet many small business speed needs.’”).

43. *Id.*

44. See Tom Gerencer, *Top 10 Advantages of Fiber Optic Internet Connections*, HEWLETT-PACKARD (Apr. 21, 2020), <https://www.hp.com/us-en/shop/tech-takes/top-10-advantages-fiber-optic-internet-connections> (on file with the *University of the Pacific Law Review*) (adding fiber optic internet is “much faster and more reliable vs. cable internet or DSL”).

45. See *id.* (noting the copper wires supporting cable internet produce excessive heat, thus “weakening the signal and picking up interference”).

46. See Ry Crist, *Fiber On the Rise: What the FCC's New Data Tells Us About Broadband in the U.S.*, CNET (Dec. 6, 2021), <https://www.cnet.com/home/internet/fiber-on-the-rise-what-fcc-new-data-tells-us-about-broadband-in-the-us/> (on file with the *University of the Pacific Law Review*) (“[P]roviders have focused on building out fiber networks in population-dense regions around America’s major cities, leaving rural internet customers out of the mix.”).

47. Blair Levin, *The Senate Infrastructure Bill's Four Interconnected Broadband Components*, BROOKINGS INST. (Aug. 13, 2021), <https://www.brookings.edu/blog/the-avenue/2021/08/13/the-senate-infrastructure-bills-four-interconnected-broadband-components/> (on file with the *University of the Pacific Law Review*).

48. Kevin Taglang, *The Largest U.S. Investment in Broadband Deployment Ever*, BENTON INST. (Nov. 6, 2021), <https://www.benton.org/blog/largest-us-investment-broadband-deployment-ever> (on file with the *University of the Pacific Law Review*).

49. See Carri Bennet, *Broadband Expansion Under the Infrastructure Investment and Jobs Act*, BROADBAND CMTYS. (Nov. 2021), <https://www.bbcmag.com/community-broadband/broadband-expansion-under-the-infrastructure-investment-and-jobs-act> (on file with the *University of the Pacific Law Review*) (noting there may be an opportunity “for the infrastructure players, including large and small internet service providers such as telcos and cable companies, which can provide fiber-based backhaul incremental service over their gigabit networks”).

C. *The Largest Digital Divide: Affordability*

Today, nearly ten percent of California families—1.25 million households—are completely unconnected from broadband.⁵⁰ Affordability is the driving factor that keeps households from connecting.⁵¹ Even where broadband is available, close to 100 million Americans do not subscribe because they cannot afford to pay the monthly fees.⁵² Further, unconnected families are more likely to be low-income and Latino households.⁵³

In the interest of maximizing profits, larger ISPs also avoid building modern fiber networks in low-income communities.⁵⁴ AT&T is a prime example of “digital redlining”—offering high-speed internet access to some households while ignoring others.⁵⁵ With no regulatory oversight of its fiber-to-the-home deployment, AT&T built its all-fiber network mainly in higher-income communities.⁵⁶ The median household income of those households with AT&T’s slow Digital Subscriber Line service is \$53,186.⁵⁷ In contrast, the median household income of California households with access to AT&T’s most advanced fiber-to-the-home network is \$94,208.⁵⁸ The inequitable access to fiber also cuts across both rural and urban counties—household income seemingly being the decisive factor in what service is available.⁵⁹

50. See *Internet Adoption and the “Digital Divide” in California*, CAL. EMERGING TECH. FUND (Mar. 30, 2021), <https://www.cetfund.org/action-and-results/statewide-surveys/2021-2/> (on file with the *University of the Pacific Law Review*) (adding “5.6% are underconnected,” meaning they lack a proper computing device).

51. *Id.*

52. See *Broadband Progress Report*, FCC, <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/eighth-broadband-progress-report> (last visited June 3, 2021) (on file with the *University of the Pacific Law Review*) (noting that “because millions [of Americans] still lack access to or have not adopted broadband, “the Report concludes broadband is not yet being deployed in a reasonable and timely fashion”).

53. See *Internet Adoption and the “Digital Divide” in California*, *supra* note 50 (“Several California demographic groups fall more than 10 percentage points below the 90% overall adoption goal,” including seventy percent for households earning less than \$20,000, and seventy-five percent for Spanish-speaking Latinos).

54. See Shara Tibken, *The Broadband Gap’s Dirty Secret: Redlining Still Exists in Digital Form*, CNET (June 28, 2021), <https://www.cnet.com/home/internet/features/the-broadband-gaps-dirty-secret-redlining-still-exists-in-digital-form/> (on file with the *University of the Pacific Law Review*) (“Big providers, when deciding where to invest the money to upgrade their networks, often focus on wealthier parts of cities and shun low-income communities.”).

55. See *id.* (“The gap in broadband coverage in a poorer neighborhood is effectively a digital form of redlining, a now banned practice that denied service based on race.”).

56. STRAIN ET AL., *supra* note 15, at 10.

57. *Id.*

58. *Id.*

59. See *id.* at 13 (noting that while fourteen rural counties had no access to AT&T broadband at the FCC’s 25/3 mbps speed, “[m]any urban and suburban counties have a significant number of households that are [also] underserved by AT&T broadband”).

D. COVID-19 Compels California to Fight Back

In August 2020, Governor Newsom signed an executive order to accelerate the state's transition towards digital equity.⁶⁰ Executive Order N-73-20 requested CBC to create a new state "Broadband Action Plan."⁶¹ The Executive Order also required CPUC to increase people's access to fiber infrastructure.⁶² In the Legislature, California State Senator Lena Gonzalez introduced SB 1130, instructing CASF to reform the program's metrics around fiber networks.⁶³ Local governments also acted to expand access.⁶⁴ Placer County partnered with a local ISP to bring fiber internet access to 1,500 rural households through a grant program.⁶⁵ Accordingly, successful local projects provided a roadmap for the Legislature to enact a statewide fiber deployment plan.⁶⁶

III. CHAPTER 112

California State Senator Nancy Skinner introduced SB 156 to implement the broadband provisions included in Governor Newsom's 2021–22 budget package.⁶⁷ In July 2021, Governor Newsom signed SB 156 into law, creating Chapter 112.⁶⁸ Chapter 112 allocates six billion dollars over three fiscal years for broadband infrastructure.⁶⁹ The American Rescue Plan Act (ARPA) funds cover four billion dollars for expenditures allocated in Chapter 112.⁷⁰

60. *About Broadband for All*, CAL. DEP'T OF TECH, <https://broadbandforall.cdt.ca.gov/about/> (last visited June 15, 2022) (on file with the *University of the Pacific Law Review*).

61. *Executive Order*, CAL. DEP'T OF TECH, <https://broadbandforall.cdt.ca.gov/executive-order/> (last visited June 15, 2022) (on file with the *University of the Pacific Law Review*).

62. *Id.*

63. See Ernesto Falcon, *California Legislator Introduces Fiber Broadband for All Bill*, ELEC. FRONTIER FOUND. (Apr. 6, 2021), <https://www.eff.org/deeplinks/2020/04/california-legislator-introduces-fiber-broadband-all-bill> (on file with the *University of the Pacific Law Review*) (adding SB 1130 raises the "fund's minimum standards of what constitutes being 'served' by broadband, requiring that any broadband network funded by the state to be high-capacity, and holding companies subject to open-access rules that promote competition").

64. See Molly Sullivan, *Placer County, Calif., Approves \$2.2M Rural Broadband Project*, GOVTECH.COM (Oct. 13, 2021), <https://www.govtech.com/network/placer-county-calif-approves-2-2m-rural-broadband-project> (on file with the *University of the Pacific Law Review*) (describing Placer County approved a project that "aims to expand high-speed internet access to \$1,500 households").

65. *Id.*

66. *Executive Order*, CAL. DEP'T OF TECH, <https://broadbandforall.cdt.ca.gov/executive-order/> (last visited June 15, 2022) (on file with the *University of the Pacific Law Review*); see also *About Broadband for All*, *supra* note 60 ("\$2.75 billion will go towards last-mile infrastructure grants.").

67. SENATE FLOOR, FLOOR ANALYSIS OF SB 156, at 1 (Feb. 17, 2021).

68. *Middle-Mile Broadband Initiative*, CAL. DEP'T OF TECH., <https://middle-mile-broadband-initiative.cdt.ca.gov/> (last visited July 13, 2022) (on file with the *University of the Pacific Law Review*).

69. SENATE FLOOR, FLOOR ANALYSIS OF SB 156, at 9 (July 15, 2021).

70. See *id.* at 10 (noting the American Rescue Plan Act provides \$3.25 billion for the construction of the open-access broadband middle mile, and \$1.072 billion for last mile funding).

First, Chapter 112 invests \$3.25 billion in a statewide open-access, middle-mile broadband network.⁷¹ The middle mile is composed of high-capacity fiber lines carrying extensive data at high speeds.⁷² An open-access network creates a public network allowing ISPs to provide fiber internet service to customers.⁷³

To provide oversight over the development of the middle-mile network, the California Department of Technology (CDT) is responsible for establishing a broadband advisory committee.⁷⁴ The broadband advisory committee is composed of representatives from CDT and members of the California Legislature.⁷⁵ Chapter 112 further provides that CDT will establish the Office of Broadband and Digital Literacy.⁷⁶ This office will oversee the contracts for the development of the middle-mile network and will also retain a third-party administrator to manage the network's development.⁷⁷

Next, Chapter 112 allocates two billion dollars to build last-mile broadband connections.⁷⁸ The “last mile” is the last link that establishes the connection between the ISP and the business or home location.⁷⁹ Here, last-mile connections will run from the middle-mile network to an individual's location.⁸⁰ Essentially, the middle mile is analogous to the highway road system, and the last mile is like county roads that connect the highway to individual homes.⁸¹ Chapter 112 also tasks the CPUC with awarding infrastructure grants to ISPs to build last-mile connectivity in unserved areas that lack adequate internet speeds.⁸² Further,

71. *Id.* at 10.

72. *State of California Middle-Mile Broadband Initiative*, CAL. DEP'T OF TECH, <https://middle-mile-broadband-initiative.cdt.ca.gov/> (last visited June 3, 2021) (on file with the *University of the Pacific Law Review*).

73. See *What You Need to Know About Open Access Networks*, FORESITE GRP., <https://www.foresitegroup.net/what-you-need-to-know-about-open-access-networks-2/> (last visited June 3, 2021) (on file with the *University of the Pacific Law Review*) (noting the OAN model “allows ISPs to use another owner's existing network . . . with little to no investment in capital expenditure”).

74. SB 156, 2021 Leg., 2021–2022 Sess. (Cal. 2021).

75. *Id.*

76. *Id.*

77. See *id.* (“The third-party administrator retained by the office shall be a California based nonprofit entity with demonstrated experience serving public libraries, elementary and secondary schools, and institutions of higher education with broadband connectivity.”).

78. SENATE FLOOR, FLOOR ANALYSIS OF SB 156, at 6 (July 15, 2021); Cal. SB 156.

79. See *What Is Last Mile Internet?*, MHO: BLOG (June 29, 2021), <https://blog.mho.com/what-is-last-mile-internet> (on file with the *University of the Pacific Law Review*) (describing three levels of connectivity that make up the global internet: (1) huge internet exchange points that span and connect continents; (2) providers that connect these level one exchange points with local ISPs; and (3) the Last Mile, or the portion of connection between your ISP and you).

80. Marvin Deon, *California Takes Major Steps Toward Universal Internet Service*, COMMON SENSE MEDIA (Nov. 8, 2021), <https://www.common sense media.org/kids-action/articles/214alifornia-takes-major-steps-toward-universal-internet-service> (on file with the *University of the Pacific Law Review*).

81. Steve Monaghan, *Commentary: CIO Outlines 4 Ways Counties Can Move Now on Broadband*, GOVTECH (Jan. 19, 2022), <https://insider.govtech.com/214alifornia/news/commentary-cio-outlines-4-ways-counties-can-move-now-on-broadband> (on file with the *University of the Pacific Law Review*).

82. See SB 156, 2021 Leg., 2021–2022 Sess. (Cal. 2021) (providing that priority locations include “regions underserved by middle-mile networks,” defined as communities with no provider offering service at speeds of 25 mbps downstream and 3 mbps upstream).

Chapter 112 creates a \$750 million loan-loss reserve fund to assist local governments in financing, maintaining, and improving their own broadband service.⁸³

Lastly, Chapter 112 establishes a twenty million dollar “Broadband Adoption Account”.⁸⁴ With these funds, CPUC will expand “digital inclusion” through grants to public institutions.⁸⁵ These institutions are responsible for helping hard-to-reach communities—notably low-income and senior households—adopt broadband service.⁸⁶

IV. ANALYSIS

High-speed broadband is regarded as the most vital network of the 21st century.⁸⁷ Broadband internet is essential for Americans to perform their jobs, participate in school learning, access health care services, and stay connected with relatives.⁸⁸ Nationwide broadband expansion efforts demonstrate the urgency to extend modern fiber infrastructure to the last mile—where ISPs can connect every unserved home and business in the United States.⁸⁹ However, the movement toward broadband for all will be a failure if millions of Americans continue to lack affordable internet access.⁹⁰ Section A explains how Chapter 112 gives state agency leaders the necessary resources to deploy a fiber-based middle-mile network.⁹¹ Section B argues Chapter 112 falls short by allowing large providers to weaken regulatory oversight over last-mile connections.⁹² Section C proposes the California Legislature pass a new bill strengthening the goals of Chapter 112.⁹³

83. SB 156, 2021 Leg., 2021–2022 Sess. (Cal. 2021).

84. *Id.*

85. *Id.*

86. *Id.*

87. Tom Wheeler, *Striking a Deal to Strengthen Broadband Access for All*, BROOKINGS INST. (May 14, 2021), <https://www.brookings.edu/research/striking-a-deal-to-strengthen-broadband-access-for-all/> (on file with the *University of the Pacific Law Review*).

88. *Fact Sheet: The American Jobs Plan*, WHITE HOUSE (Mar. 31, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/> (on file with the *University of the Pacific Law Review*).

89. KATHRYN DE WIT & ANNA READ, PEW, HOW STATES ARE EXPANDING BROADBAND ACCESS 3 (2020).

90. See *Fact Sheet: The American Jobs Plan*, *supra* note 88 (“[B]uilding out broadband infrastructure isn’t enough. We must also ensure that every American who wants to can afford high-quality and reliable broadband internet.”).

91. *Infra* Section IV A.

92. *Infra* Section IV B.

93. *Infra* Section IV C.

A. Chapter 112 Empowers State Agency Leaders to Take Ownership of Fiber Network Deployment

Governor Newsom described Chapter 112 as a once-in-a-generation expansion of opportunity for students, families, and businesses in a state known for being an “innovation economy.”⁹⁴ In order to expand broadband into every unserved community, however, California first needs to secure enough optical fiber to construct thousands of miles of necessary infrastructure.⁹⁵ This level of investment is not cheap—the average cost of installing fiber optic cable is \$27,000 per mile.⁹⁶ Thus, if California solely relied on the private sector to make these investments, large ISPs would only prioritize populated, affluent areas likely to generate a profit.⁹⁷ Crucially, Chapter 112 avoids this pitfall by subsidizing the upfront fiber deployment costs.⁹⁸ By deploying fiber as the backbone of the network, Chapter 112 chooses a low-maintenance, “future proof” technology—meaning the installed cables will last fifty to one hundred years.⁹⁹ Further, the strongest provision of Chapter 112 is it entrusts the CDT—not profit-driven ISPs—with overseeing the construction of the middle-mile network.¹⁰⁰

CDT is proving it is more than capable—the agency is serving as the necessary backbone of California’s unprecedented move towards universal broadband.¹⁰¹ Since passage of Chapter 112, CDT acted quickly to tap into the \$3.25 billion in funding for the statewide fiber network buildout.¹⁰² In May 2022, CDT purchased

94. See *Governor Newsom Signs Historic Broadband Legislation to Help Bridge Digital Divide*, *supra* note 10 (“[T]he digital divide holding back too many communities in a state renowned for its pioneering technology and innovation economy.”).

95. Phil Britt, *California Awards Two Middle Mile Contracts*, TELECOMPETITOR (May 23, 2022), <https://www.telecompetitor.com/california-awards-two-middle-mile-contracts/> (on file with the *University of the Pacific Law Review*).

96. Kevin Schwartzbach, *With Billions for Broadband Incoming, How Have State and Local Governments Expanded High-Speed Internet Access?*, ROCKEFELLER INST. (Jan. 25, 2022), <https://rockinst.org/blog/with-billions-for-broadband-incoming-how-have-state-and-local-governments-expanded-high-speed-internet-access/> (on file with the *University of the Pacific Law Review*).

97. See *id.* (“Because of these costs, private sector ISPs generally prioritize investments in areas with more potential customers where they are more likely to turn a profit.”).

98. *Id.*; *Governor Newsom Signs Historic Broadband Legislation to Help Bridge Digital Divide*, *supra* note 10.

99. See Steve Monaghan, *Commentary: CIO Outlines 4 Ways Counties Can Move Now on Broadband*, GOVTECH (Jan. 19, 2022), <https://insider.govtech.com/216alifornia/news/commentary-cio-outlines-4-ways-counties-can-move-now-on-broadband> (on file with the *University of the Pacific Law Review*) (“Fiber is commonly called ‘future proof’ in that as technology capability advance over time, it drives increasingly higher data capacity over the same installed fiber cable.”).

100. See *About Our Organization*, CAL. DEP’T TECH., <https://cdt.ca.gov/about/> (last visited Aug. 11, 2022) (on file with the *University of the Pacific Law Review*) (“CDT is leading statewide broadband planning and execution to deliver digital equity and reliability for all Californians.”).

101. *Middle-Mile Broadband Initiative Frequently Asked Questions*, CAL. DEP’T TECH., <https://middle-mile-broadband-initiative.cdt.ca.gov/pages/mmbi-about> (last visited Aug. 11, 2022) (on file with the *University of the Pacific Law Review*).

102. *California Readies 3,000 Miles of Network Infrastructure to Achieve Broadband for All*, LAKE CNTY. REC. BEE (May 23, 2022), <https://www.record-bee.com/2022/05/23/216alifornia-readies-3000-miles-of>

\$225 million worth of optical fiber and materials—enough to build 3,000 miles of the network.¹⁰³ This initial purchase is a major step forward in California’s broadband-for-all vision.¹⁰⁴ Securing these materials is no easy task; California faces competition with other states and global supply chain issues that intensified after the COVID-19 pandemic.¹⁰⁵ In fact, due to the combination of increased demand and a shortage of key materials, the price of fiber rose seventy percent in less than two years.¹⁰⁶ Fortunately, CDT mitigated these global impacts through long-term planning.¹⁰⁷ In its competitive bidding process, CDT exercised its purchasing power by arranging a pre-negotiated price for critical materials such as optical fiber, electrical conduit, and construction hardware.¹⁰⁸ Further, CDT is guaranteed to have these materials available at pre-arranged prices for the next four years.¹⁰⁹ This timeline aligns perfectly with California’s goal to finish building the entire middle-mile network by December 2026.¹¹⁰

To build and maintain the middle-mile infrastructure, CDT selected CENIC—a renowned nonprofit organization that operates the fiber network for a majority of California’s research and educational institutions.¹¹¹ This selection was no coincidence: Chapter 112 required CDT to select a nonprofit Third-Party Administrator with a proven background in serving public organizations.¹¹² With this requirement, Chapter 112 ensures all partners are driven towards the same objective—delivering universal broadband as a public good.¹¹³ Working urgently

network-infrastructure-to-achieve-broadband-for-all/ (on file with the *University of the Pacific Law Review*).

103. *Id.*

104. *See id.* (“This action is one part of a comprehensive and long-term approach to tackling the broadband infrastructure deficiencies still impacting rural and low-income communities, bringing the state closer to achieving affordable, high-speed broadband internet service for all communities.”).

105. *Id.*; *Keeping the Internet Up and Running in Times of Crisis*, OECD, <https://www.oecd.org/coronavirus/policy-responses/keeping-the-internet-up-and-running-in-times-of-crisis-4017c4c9/> (last updated May 4, 2020) (on file with the *University of the Pacific Law Review*).

106. Joel Khalili, *Shortage of Fiber Optic Cables Could Spell Disaster for Technology Firms*, TECHRADAR (JULY 25, 2022), <https://www.techradar.com/news/shortage-of-fiber-optic-cables-could-spell-disaster-for-technology-firms> (on file with the *University of the Pacific Law Review*).

107. *See California Readies 3,000 Miles of Network Infrastructure to Achieve Broadband for All*, *supra* note 102 (“The state’s Invitation For Bid (IFB) was a proactive step to ensure supplies will be available at a pre-negotiated price when they are needed.”).

108. *Id.*

109. *Id.*

110. *Id.*

111. *State Selects CENIC California MMBI as Third-Party Administrator for Broadband Middle-Mile Network*, CENIC (Sept. 2, 2021), <https://cenic.org/news/state-selects-cemmbi> (on file with the *University of the Pacific Law Review*); *see also About CENIC*, CENIC, <https://cenic.org/about> (last visited Aug. 11, 2022) (on file with the *University of the Pacific Law Review*) (“The network serves over 20 million users across California, including the vast majority of K-20 students together with educators, researchers, and individuals at other vital public-serving institutions.”).

112. SB 156, 2021 Leg., 2021–2022 Sess. (Cal. 2021).

113. *See State Selects CENIC California MMBI as Third-Party Administrator for Broadband Middle-Mile Network*, *supra* note 111 (“Our goal, in partnership with the state, is to ensure that every community—rural, urban, tribal—has access to broadband technologies and to do this work with alacrity.”).

towards the same goal, CDT’s partnership with CENIC, recently renamed GoldenStateNet, has been a success.¹¹⁴ After GoldenStateNet provided maps and design recommendations for proposed middle-mile routes, CDT recently issued a final construction plan—entailing 10,000 miles of fiber network deployment statewide.¹¹⁵ In its first round of deployment, GoldenStateNet is set to build fiber infrastructure in eighteen specific areas, including areas in Oakland.¹¹⁶ Through this partnership, Chapter 112 is demonstrating that publicly owned middle-mile infrastructure is not a fantasy—it is a 21st-century necessity public and nonprofit leaders are delivering.¹¹⁷ However, this landmark investment is only a means to an end; in order to be a success, Chapter 112 must also enable affordable last-mile network connections throughout California.¹¹⁸

B. Chapter 112 Falls Short by Allowing Large Providers to Weaken Regulatory Oversight over Last-Mile Connections

With Chapter 112, California is primed to close the State’s digital divide once and for all.¹¹⁹ By allocating billions of taxpayer dollars towards the construction of a statewide fiber network, California is treating access to broadband as an essential right.¹²⁰ However, Chapter 112 falls short by not mandating ISPs—in return for receiving grants to build last-mile connectivity from the network—to offer low-cost, high-speed broadband plans.¹²¹ Instead, in prescribing its rules for awarding

114. See *CDT Releases GoldenStateNet’s Recommended Design of Statewide Open-Access Broadband Network*, CENIC (Apr. 26, 2022), <https://cenic.org/news/cdt-releases-goldenstatenets-recommended-design-of-statewide-open-access-broadband-network> (on file with the *University of the Pacific Law Review*) (“GoldenStateNet . . . outlined about 8,700 new miles of proposed middle-mile construction routes that will connect previously unserved residents in urban, rural and tribal communities.”).

115. *Id.*; *State of California Middle-Mile Broadband Initiative*, CAL. DEP’T OF TECH, <https://middle-mile-broadband-initiative.cdt.ca.gov/> (last visited June 3, 2021) (on file with the *University of the Pacific Law Review*).

116. Justin Berton, *CA Selects Oakland for Historic Investment to Close the Digital Divide*, CITY OF OAKLAND (Feb. 23, 2022), <https://www.oaklandca.gov/news/2021/ca-selects-oakland-for-historic-investment-to-close-the-digital-divide> (on file with the *University of the Pacific Law Review*).

117. See *id.* (“Segments of Interstate 880, State Route 185, I-980, and I-580 will all be sites of investment in ‘middle-mile fiber,’ the key to unlocking equitable access to high-speed broadband in many of Oakland’s most under-connected neighborhoods.”).

118. See *Middle-Mile Broadband Initiative FAQ*, CAL. DEP’T TECH., <https://cdt.ca.gov/middle-mile-advisory-committee/middle-mile-faq/> (last visited Aug. 11, 2022) (on file with the *University of the Pacific Law Review*) (adding the goal of the middle-mile network is to “enable last-mile network connectivity throughout the state”).

119. See Liu, *supra* note 14 (“[P]assage of SB 156 . . . means every California community has the resources available to chart a long-term course toward building fiber networks.”).

120. See Niu Gao et al., *How Has California Narrowed Its K-12 Digital Divide?*, PUB. POL’Y INST. CAL. (Apr. 5, 2022), <https://www.ppic.org/blog/how-has-california-narrowed-its-k-12-digital-divide/> (on file with the *University of the Pacific Law Review*) (highlighting how California can become a leader in creating equitable digital access thus narrowing the digital divide).

121. See Robin Urevich, *California’s Plan to Close the Digital Divide Hits Industry Roadblocks*, CALIFORNIAN (June 28, 2022), <https://www.thecalifornian.com/story/news/2022/06/28/californias-plan-close-digital-divide-hits-industry-roadblocks/7759955001/> (on file with the *University of the Pacific Law Review*) (“[I]nstead of a mandatory \$40 per month plan, grant applicants would be awarded extra points for offering such

infrastructure grants, the California Public Utilities Commission (CPUC) will merely “encourage” ISPs to offer low-cost plans.¹²² As an alternative to offering affordable plans, CPUC allows ISPs to participate in IJJA’s Affordable Connectivity Program (ACP)—which partially subsidizes internet service for low-income households.¹²³

Allowing ISPs to participate in ACP, in lieu of mandating low-cost broadband service, is inadequate for two reasons.¹²⁴ First, while ACP provides low-income households thirty dollars per month to help pay for internet, subsidies alone are a windfall for providers and fail to tackle overpriced broadband.¹²⁵ Second, a majority of the eligible California households are not yet participating in ACP.¹²⁶ ACP’s low participation rate is due to a number of factors, such as lack of knowledge or confusion about the application process.¹²⁷

With Chapter 112, the California Legislature repeated the mistakes of the past by not arming CPUC with the regulatory authority necessary to hold large providers accountable.¹²⁸ Once again, private ISPs are emboldened to derail the State’s mission towards equitable broadband access.¹²⁹ In fact, since the passage of Chapter 112, California’s largest providers spent nearly five million dollars on

a service.”).

122. See Cal. Pub. Util. Comm’n, Decision Adopting Federal Funding Account Rules (Apr. 21, 2022), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M469/K653/469653128.PDF> (on file with the *University of the Pacific Law Review*) (“We encourage all applicants to include a generally available low-cost broadband plan. Applications will receive 20 additional points for offering a generally available low-cost broadband plan for the life of the infrastructure.”).

123. See *id.* (noting that the final rule “requires grant recipients to participate in the Federal Communications Commission’s Affordable Connectivity Program or offer an equivalent program, as well as offer a low-cost broadband plan”); see also *Affordable Connectivity Program*, FCC, <https://www.fcc.gov/acp> (last visited Aug. 11, 2022) (on file with the *University of the Pacific Law Review*) (describing ACP).

124. See *Fact Sheet: The American Jobs Plan*, *supra* note 88 (“While the President recognizes that individual subsidies to cover internet costs may be needed in the short term, he believes continually providing subsidies to cover the cost of overpriced internet service is not the right long-term solution for consumers or taxpayers.”).

125. *Id.*; *Affordable Connectivity Program*, FCC, <https://www.fcc.gov/acp> (last visited July 13, 2022) (on file with the *University of the Pacific Law Review*).

126. See Niu Gao et al., *How Has California Narrowed Its K-12 Digital Divide?*, PUB. POL’Y INST. CAL. (Apr. 5, 2020), <https://www.ppic.org/blog/how-has-california-narrowed-its-k-12-digital-divide/> (on file with the *University of the Pacific Law Review*) (“[T]he FCC estimates that at least 3.7 million California households are eligible . . . [h]owever . . . only 1.2 million had enrolled” in . . . ACP).

127. See Angelina Panettieri, *Affordable Connectivity Program: What You Need to Know*, NAT’L LEAGUE CITIES, <https://www.nlc.org/article/2022/03/03/affordable-connectivity-program-what-you-need-to-know/> (last visited July 13, 2022) (on file with the *University of the Pacific Law Review*) (adding that eligible households may fail to apply for ACP for a number of reasons, including “a lack of awareness, a lack of trust in government or service providers, lack of information in an accessible language, lack of supporting documentation, confusion about the enrollment process”).

128. See Urevich, *supra* note 121 (“Earlier this year, lawmakers helped the telecom industry win a key battle over whether the state can demand price caps and lower cost internet plans in exchange for millions of dollars in grant funding.”).

129. See *id.* (“[T]he industry is advancing proposals that could water down the state’s reforms.”).

lobbying lawmakers in Sacramento.¹³⁰ Now, the Legislature is considering a new bill, AB 2749, which would strip CPUC of any authority to regulate broadband pricing.¹³¹ In its criteria for awarding grants, CPUC currently favors plans that offer broadband speeds of at least 50 mbps for no more than forty dollars per month.¹³² AB 2749, however, removes these requirements for high-speed, affordable plans.¹³³

If AB 2749 becomes law, it will diminish any hope of competition in the broadband market.¹³⁴ Chapter 112 sought to enable municipal broadband providers, such as local governments, to compete with private Internet Service Providers (ISPs) in building last-mile connectivity.¹³⁵ Tasked with serving the public good, and not generating profits, municipal broadband providers could drive down internet costs.¹³⁶ However, through private providers' influence, AB 2749 imposes a 180-day deadline for CPUC to grant or deny applications for last-mile infrastructure grants.¹³⁷ If CPUC does not make a decision within the deadline, it is forced to automatically approve the early application.¹³⁸ This requirement would put municipal ISPs—who need to conduct extensive feasibility studies before submitting an application—at a severe disadvantage.¹³⁹ Established ISPs, on the other hand, can bypass such studies and inundate CPUC with early applications.¹⁴⁰ By suppressing competition, private providers will have a double advantage—utilizing taxpayer-funded infrastructure costs while continuing to charge excessive rates.¹⁴¹ Accordingly, California will fail to close the digital divide if it allows

130. *Id.*

131. Liu, *supra* note 14.

132. Cal. Pub. Util. Comm'n, Decision Adopting Federal Funding Account Rules (Apr. 21, 2022), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M469/K653/469653128.PDF> (on file with the *University of the Pacific Law Review*) (offering up to “20 points for applications to include one plan offering speeds of at least 50 Mbps download AND 20 Mbps upload for no more than \$40 per month”).

133. See Liu, *supra* note 14 (“[T]he market is such that you have to . . . accept the high prices set by monopolistic ISPs. AB 2749 would further entrench this exploitative status quo.”).

134. See Urevich, *supra* note 121 (commenting AB 2749 “goes against the intent of California’s ambitious new broadband plan: to allow local and tribal governments . . . to compete on a more even playing field with big telecom”).

135. *Id.*

136. *Id.*

137. *Id.*

138. Liu, *supra* note 14.

139. See *id.* (adding public providers “aren’t asking to receive funds more quickly. They are more interested in deploying their networks correctly”).

140. *Id.*

141. *Id.*

private providers to dictate the terms.¹⁴² Fortunately, as it has done in the past, California can regain public control over delivering high-speed internet access to communities with the most need.¹⁴³

C. Chapter 112 Can Achieve Universal Broadband Adoption by Assisting Municipal ISPs or Mandating Affordable Plans

In spite of recent lobbying efforts, it is not too late for Chapter 112 to reclaim its authority over delivering affordable broadband access to all Californians.¹⁴⁴ One of the most effective steps the California Legislature can take is to finally put municipal broadband providers on an equal playing field with private ISPs.¹⁴⁵ CPUC was on the right track when it prescribed its criteria for awarding last-mile infrastructure funds—giving more weight to local government providers.¹⁴⁶ However, there are currently only three municipal broadband providers, including the cities of Beverly Hills and Santa Monica, offering the most updated fiber-to-the-home service in California.¹⁴⁷ Thus, every other community seeking to implement municipal broadband will first need to conduct rigorous feasibility studies before submitting a grant application.¹⁴⁸ Broadband feasibility studies require a community to conduct extensive market research, build a network model, and develop a cost analysis plan.¹⁴⁹ These studies are time consuming and expensive especially for unserved communities with limited resources.¹⁵⁰

142. See *id.* (“Without the opportunity for proper, deliberate vetting, on top of the anti-fiber and anti-affordability provisions, this bill will cause the state to squander taxpayer dollars and do very little for broadband access.”).

143. See Gonzalez, *supra* note 37 (“The change signifies what we hope to see more of—state action empowering local communities set on improving local connectivity.”).

144. See Liu, *supra* note 14 (“If we’re going to do it right, A.B. 2749 cannot be passed into law.”).

145. See Masha Abarinova, *New Industry Group Aims to Give Municipal Broadband a Boost, Raises \$100k*, FIERCETELECOM (May 9, 2022), <https://www.fiercetelecom.com/broadband/municipal-broadband-advocacy-group-raises-50k-just-after-formation> (on file with the *University of the Pacific Law Review*) (“We want to make sure municipal broadband is an allowable use of federal and state dollars. Because municipal networks are successful and have been . . . providing access and equity throughout the country.”).

146. See *CPUC Adopts Program Rules to Bring Broadband to Communities Most in Need*, CAL. PUB. UTIL. COMM’N (Apr. 21, 2022), <https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-adopts-program-rules-to-bring-broadband-to-communities-most-in-need> (on file with the *University of the Pacific Law Review*) (“The Decision achieves a careful balance with a preference for local government, non-profit, and tribal projects, while also maintaining an opportunity for private providers.”).

147. See *Municipal Broadband Providers in California*, CONNECTCALIFORNIA, <https://www.connectcalifornia.com/internet-service/municipal-broadband-providers> (last visited Aug. 11, 2022) (on file with the *University of the Pacific Law Review*) (“Only 6 of the 17 municipal broadband providers in California offer residential services, with 3 offering FTTH service in the last mile.”).

148. See Liu, *supra* note 14 (“[Municipal providers] are undergoing extensive feasibility studies and analyses on how to deliver fiber infrastructure to all Californians.”).

149. Lori Sherwood, *Feasibility Studies for Municipal Broadband*, BROADBANDCOMMUNITIES (Oct. 2017), <https://www.bbcmag.com/community-broadband/feasibility-studies-for-municipal-broadband> (on file with the *University of the Pacific Law Review*).

150. See Schwartzbach, *supra* note 16 (“[F]easibility studies can cost tens of thousands of dollars.”).

Since the Governor already signed Chapter 112 into law, and CPUC is already accepting applications, the California Legislature should pass a new bill funding municipal broadband feasibility studies.¹⁵¹ This new bill would not be a major overhaul as the Loan Loss Reserve Fund in Chapter 112 already reserves financing for a municipality’s “deployment of broadband infrastructure.”¹⁵² A new bill would simply expand the scope of this fund to include financing of municipal broadband feasibility studies.¹⁵³ By requiring CPUC to fund feasibility studies for local governments, municipal broadband will clear a hurdle and play a vital role in achieving universal, affordable internet access.¹⁵⁴

Even with state funding, some municipalities conducting these studies may determine that it is not financially feasible to build a public network.¹⁵⁵ In that case, private ISPs will need to fill in the gap.¹⁵⁶ However, a new bill should also mandate that CPUC only award last-mile infrastructure grants to providers that can offer a low-cost broadband plan for low-income Californians.¹⁵⁷ In fact, there is now a federal model for low-cost, high-speed internet plans.¹⁵⁸ As a boost to the Affordable Connectivity Program, the Biden Administration recently announced twenty ISPs would begin offering high-speed plans for no more than thirty dollars per month.¹⁵⁹ Combined with subsidies of up to thirty dollars per month for low-income families, forty-eight million American households are now eligible for high-speed broadband at little to no cost.¹⁶⁰ To spread awareness, the Biden Administration is empowering federal agencies—that oversee programs like Pell Grants and Medicaid—to reach out to benefit recipients and sign them up.¹⁶¹

151. *See id.* (adding “states can take a more pro-active role” by “fund[ing] feasibility studies for municipalities”).

152. CAL. PUB. UTIL. CODE § 281.2(f)(4)(A)(iii).

153. Schwartzbach, *supra* note 16.

154. *Id.*

155. *See id.* (“In some cases, such as that of Seattle, studies have concluded that the municipality would not be able to finance the buildout of a network, despite significant interest.”).

156. *See CPUC Adopts Program Rules to Bring Broadband to Communities Most in Need*, CAL. PUB. UTIL. COMM’N (Apr. 21, 2022), <https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-adopts-program-rules-to-bring-broadband-to-communities-most-in-need> (on file with the *University of the Pacific Law Review*) (“The Decision achieves a careful balance with a preference for local government, non-profit, and tribal projects, while also maintaining an opportunity for private providers.”).

157. *See Wheeler, supra* note 87 (“[A]ny company that receives a federal broadband deployment payment should be required to provide a low-cost, high-speed broadband tier for low-income Americans.”).

158. *Fact Sheet: President Biden and Vice President Harris Reduce High-Speed Internet Costs for Millions of Americans*, WHITE HOUSE (May 9, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/09/fact-sheet-president-biden-and-vice-president-harris-reduce-high-speed-internet-costs-for-millions-of-americans/> (on file with the *University of the Pacific Law Review*).

159. *See id.* (declaring each of these plans will provide download speeds of at least 100 mbps, and will have no additional fees nor data caps).

160. *See id.* (adding that nearly forty percent of American households qualify for ACP because their income is at or below 200 percent of the Federal Poverty Level, or they participate in federal assistance programs).

161. *Id.*

These new federal guidelines are a critical step forward in closing the digital divide.¹⁶² Further, since the Biden Administration announced these commitments after the passage of Chapter 112, the California Legislature should act to strengthen the State's broadband vision.¹⁶³ A new bill should enact three changes: it should fund municipal broadband feasibility studies; mandate low-cost internet plans; and require state agencies to enroll low-income Californians in affordable plans.¹⁶⁴ With these additions, California will be on a path to a broadband-for-all future.¹⁶⁵

V. CONCLUSION

Chapter 112 sought to rectify a deep inequity—lack of high-speed, affordable broadband for low-income Californians—that the COVID-19 pandemic further exposed.¹⁶⁶ As an innovation leader, California recognized that access to broadband is essential to economic and educational opportunities in the 21st century.¹⁶⁷ Taking advantage of a once-in-a-generation federal investment, Chapter 112 takes a significant step towards building the backbone of universal broadband access.¹⁶⁸ Disadvantaged students, low-income families, and unserved businesses are closer than ever to fully participating in the digital era.¹⁶⁹

Continuing a trend, however, the profit-driven ISP industry can quickly undo all the progress Chapter 112 has made.¹⁷⁰ Even with public funds, private providers are heavily advocating to derail pricing regulation and demolish any opportunity

162. *See id.* (noting participating providers cover eighty percent of the U.S. population, and the Biden Administration “encourages additional internet service providers to join this effort to close the digital divide”).

163. *See* Liu, *supra* note 14 (“All of these provisions run contrary to both the established goals of the Biden Administration and the Newsom administration to deliver affordable, future-proof fiber to all.”).

164. Schwartzbach, *supra* note 16; Wheeler, *supra* note 87; *see also More Than 1.6M California Households Enrolled in Affordable Broadband Program, White House Says*, ABC (July 21, 2022), <https://abc7.com/affordable-connectivity-program-california-internet-broadband/12065928/> (on file with the *University of the Pacific Law Review*) (noting Vice President Harris sent letters to all 50 state governors “encouraging them to spread the word in their states to enroll”).

165. *See* AMY TONG ET AL., CAL. BROADBAND COUNCIL, BROADBAND FOR ALL ACTION PLAN 3 (2020) (commenting that achieving universal broadband access will require “[i]ncreas[ing] access to affordable broadband services” and “[e]ncourag[ing] broadband competition”).

166. *See Governor Newsom Signs Historic Broadband Legislation to Help Bridge Digital Divide*, *supra* note 10 (commenting that in signing SB 156 into law, Governor Newsom said that “the state is committed to addressing the challenges laid bare by the pandemic, including the digital divide holding back too many communities”).

167. *See* TONG ET AL., *supra* note 165, at 3 (“People and communities that lack broadband and the means to use it are falling behind.”).

168. *Governor Newsom Signs Historic Broadband Legislation to Help Bridge Digital Divide*, *supra* note 10; *see also* SENATE FLOOR, FLOOR ANALYSIS OF SB 156, at 10 (July 15, 2021) (noting the American Rescue Plan Act provides \$3.25 billion for the construction of the open-access broadband middle mile, and \$1.072 billion for last mile funding).

169. *See* TONG ET AL., *supra* note 165, at 2 (“[SB 156] will make broadband more accessible than ever before, expanding opportunity across the spectrum for students, families and businesses . . .”).

170. *See* Liu, *supra* note 14 (commenting that passing AB 2749 would “waste our once-in-a-generation opportunity to build affordable fiber to serve all Californians”).

for long-overdue competition in the broadband market.¹⁷¹ The California Legislature should supplement Chapter 112 with new legislation that supports municipal broadband and protects low-income consumers through low-cost plans and proactive outreach.¹⁷² If the Legislature does not pass a bill strengthening Chapter 112, and instead passes legislation weakening its provisions, digital equity will remain an unfulfilled promise in California.¹⁷³

171. *Id.*

172. See TONG ET AL., *supra* note 165, at 28 (urging CPUC to “[p]rovide guidance to local governments . . . to develop broadband strategies and explore options for increasing competition in their communities”).

173. Liu, *supra* note 14.

* * *