

# Wire California

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June 14, 2023

Sen. Steven Bradford, Chair  
Ms. Sarah E. Smith, Committee Consultant  
Senate Energy Utilities and Communications Committee  
1021 O Street, Room 3350  
Sacramento, CA 95814

## **Re: Opposition to AB-965; See Needed Amendments in Appendix A**

Dear Honorable Senator Bradford,

Please work with Assemblymember Carrillo to further amend AB-965 to provide first-rate broadband service to Californians: wired broadband service via Fiber Optics or Coaxial cable to the premises that offers speeds of at least 100 Mbps down and 20 Mbps up, a data transmission speed that wireless service cannot reliably deliver.

Californians already paid \$16 billion+ on their CA landline phone bills to upgrade their legacy copper phone lines to fiber optic cables to the home, but AT&T, Verizon and other Big Telecom companies never carried through on their contractual agreements to do so in many areas, creating the "Digital Divide", by design. The state can recover these misappropriated funds, the back taxes that were avoided via illegal cross-subsidies benefitting wireless and pass effective state regulation to finally stand up to these Big Telecom companies and make them accountable for their past actions.

Specifically, AB-965 needs amendments (see specific language in Appendix A) to:

- acknowledge the legislative purposes of the federal 1996 Telecommunications Act, which Amended the 1934 Communications Act, is "to make available . . . a rapid, efficient, Nation-wide . . . wire and radio . . . service with adequate facilities at reasonable charges . . . for the purpose of promoting safety of life and property;"
- define minimum upload and download speeds for adequate wired broadband service (information service) and the acceptable range of RF signal strength (measured as RSSI in dBm) in outdoor areas for wireless telecommunication service, consistent with *Title 47 U.S. Code § 324, Use of Minimum Power*;
- preserve expressly for localities their federally-established authority to determine their preference for how best to deliver broadband to their residents; and
- Make AB-965 consistent with Gov. Newsom's 2021 Broadband Budget Bill, SB-156 (Chapter 112. Statutes of 2020) to encourage competition in wired broadband service.

By vetoing Big Telecom wireless deployment bills SB.649 in 2017 and SB.556 in 2021, California Governors have been very clear in [supporting local control](#) over the placement, construction and operations of Wireless

Telecommunications Facilities (WTFs) of any size or any "G." Localities are to maintain control over placement, construction and operations of industrial equipment that support wireless telecommunications service (the ability to make outdoor wireless phone calls) and wired information service (internet, video/ audio streaming and gaming) in order to deliver actual public safety to the locality's residents.

The key problem is with wireless broadband. Wireless broadband is an unnecessary, hazardous, energy-inefficient, fire prone, slower and less secure means of delivering broadband compared to Fiber Optics to the premises (FTTP). Gov Newsom wrote in his SB.556 veto letter in October, 2021 (See Newsom's full letter [here](#)).

"There is a role for local government in advancing broadband efforts. Part of our achievements laid out in the Broadband budget bill SB 156 (Chapter 112. Statutes of 2020) enables and encourages local governments to take an active role in the last mile deployment and, in doing so, drive competition and increase access."

In short, the decision to choose wired broadband (via FTTP) or wireless broadband via densified deployment of many WTFs in residential neighborhoods is a local one and NOT a statewide matter. Such a decision is fundamental to local zoning discretion and local residential values, so please amend AB-965, accordingly.

Big Telecom lobbyists have been relentless in trying to enroll California into a foolhardy agenda: remove local control over the placement and construction of WTFs. This agenda is inconsistent with the legislative intent of the 1996 Telecommunications Act.

As one can read [here](#), a reasonable time for processing permits for WTFs was recognized by the US Supreme Court in its 2005 ruling in Palos Verdes vs Abrams. The ruling relied on the Conference Report of the 1996 Telecommunications Act (1996-TCA) as a definitive source of the congressional intent of the 1996-TCA. The [Conference Report](#) states:

"It is not the intent of this provision to give preferential treatment to the personal wireless service industry in the processing of requests, or to subject their requests to any but the generally applicable time frames for zoning decision."

In short, no Californian will be best served by Wireless WTFs of any size or any G in front of their homes, as Wire California [communicated to Gov. Newsom](#) in 2021,

## **Only Wired Broadband Can Bridge the Digital Divide in a Future-Proof Way**

Telecom expert, Bruce Kushnick has written multiple books about the Telecom industry's duplicity, fraud and incessant bait-and-switch tactics. See Kushnick's latest article on Medium [Link to Verizon's FiOS Home Internet Is Now a Deceptive Fixed Wireless Bait and Switch](#). See also Kushnick's [2022 book](#) entitled **The Book of Violations & Egregious Acts: Trillion Dollar Broadband Scandal.**, which is summarized in Appendix B.

Our common understanding of matters is shaped by our use of terms, the meanings of which eventually get compiled into print and online [dictionaries](#), but such definitions are not precise enough for legislation.

- [Broadband](#) :: (noun) of, relating to, or being a high-speed communications network and especially one in which a frequency range is divided into multiple independent channels for simultaneous transmission, such as voice, data, or video.
- [Redline](#) :: (verb) to withhold service from neighborhoods considered poor economic risks.

- [Digital Divide](#) :: (noun) the economic, educational, and social inequalities between those who have computers and online access and those who do not; the first known use of the term was in 1994.

## Definitions to Improve AB-965

AB-965 lacks certain definitions, including a much-needed, concrete definition of "Digital Divide" based on reliable measurements of data transmission speeds in Mbps (for wireline broadband) and radio signal strength in RSSI dBm (for wireless telecommunications).

- **"Digital Divide"** :: any locality in California which does not have both wired broadband service with at least 25 Mbps download and 3 Mbps upload data transmission speeds and wireless telecommunications service with radio signal strength measured as Received Signal Strength Indicator (RSSI) values between -115 dBm and -85 dBm for any licensed or unlicensed radio frequency in outdoor areas accessible to people, per Title 47 U.S. Code [§ 324](#), Use of Minimum Power.
- **"Data-transmission speed"** :: a value for data transmission speed, as measured in Megabits per second (Mbps).
- **"Received Signal Strength Indicator" ("RSSI")** :: a measurement of the power level being received by the receiving radio after the antenna and possible cable loss, as measured in deciBel-milliWatts (dBm). RSSI is the total received power measured over the entire bandwidth of occupied Resource Blocks and over all sub-carriers of the specified bandwidth including reference signals, co-channel serving cells, non-serving cells, adjacent channel interference and thermal noise.

## "Digital Divide" has served as a chip in a long, high-stakes poker game

The "Digital Divide" is a 30-year-old term that entered our language just as the first graphical internet browsers were introduced. The term has been weaponized by Big Telecom/Cable (internet infrastructure providers) repeatedly over the last 30 years to capture vast ratepayer and taxpayer funds, so they could build the infrastructure that maximizes their profits and then "claim" that such infrastructure is private. **That is the big lie.**

The work of 30+ year telecom analyst [Bruce Kushnick](#) shows that since the 1990's Big Telecom cos. have gamed the regulatory system so well that there is institutional amnesia on the part of most Americans, who do not know the basic facts about the history of broadband in their state.

One may think that there are no state public telecommunications utilities, that the wireline networks are private investments (meaning the Big Telecoms can prevent access to much of the fiber-optic backbone), that wireless is part of the state public telecommunications utilities or that the Big Telecom companies don't control state territories. **None of these common assumptions are correct.**

From the 1930's through the 1980's, government regulation was needed to achieve universal landline telephone service. Telephone monopolies were forced to serve everyone (via regulation) to achieve the goals of the federal 1934 Communications Act:

“to make available . . . a rapid, efficient, Nation-wide . . . wire and radio . . . service with adequate facilities at reasonable charges . . . for the purpose of promoting safety of life and property;”

From the 1990's to the present, via a Big Telecom subsidiary shell game and a tidal wave of lobbying, the Big Telecom pitch has been repeated many times: "give us more government and ratepayer money, reduce regulation/barriers to deployment and we promise to close the Digital Divide and solve many other problems."

**What has been the result, year after year?** Big Telecom companies have simply chosen to take the money and break their promises. Big Telecom cos. over-serve upper- and middle-income localities and then redline lower-income localities. Kushnick's data, which has been entered into the public record at the FCC and at the CA State legislature for AB-965, clearly show this (See Appendix B). It is time to reject this false pitch and to hold the Big Telecom companies accountable with effective state regulation, which can be added to AB-965 (see Appendix A).

## **Will CA Legislators buy the false Big Telecom pitch in AB-965?**

Please, do not be bamboozled by the unsubstantiated arguments and propaganda that Big Telecom cos. and internet infrastructure providers (such as Crown Castle) say and write into bills. CA residents, your constituents, deserve much better.

Please, instead, recognize that **State legislators have the power to enforce state public telecommunications utility regulation over wired broadband** because the Oct 2019 [ruling](#) in Oct 2019 DC Cir. ruling in Mozilla Corp. v. Fed. Comm'n's Comm'n, 940 F.3d 1 (D.C. Cir. 2019) upheld the FCC's switch to no longer regulate broadband Internet (no longer impose common-carrier regulation) which **removed FCC preemption over state regulation of broadband Internet:**

The DC Circuit judges "vacate the portion of the 2018 Order that expressly preempts "any state or local requirements that are inconsistent with [its] deregulatory approach." 2018 Order ¶ 194; see id. ¶¶ 194–204 ("Preemption Directive"). The Commission ignored binding precedent by failing to ground its sweeping Preemption Directive — which goes far beyond conflict preemption — in a lawful source of statutory authority. **That failure is fatal** . . . [the] petitioners challenge the Preemption Directive on the ground that it exceeds the Commission's statutory authority. **They are right** . . . Regulation of broadband Internet has been the subject of protracted litigation, with broadband providers subjected to and then released from common carrier regulation over the previous decade. We decline to yet again flick the on-off switch of common-carrier regulation under these circumstances."

For the past 30 years, Big Telecom cos. have ignored their universal service and universal access obligations and **misappropriated over \$16 Billion in ratepayer funds** expressly dedicated to upgrading **public** legacy copper lines to **public** fiber-optic lines. Instead, Big Telecom used these ratepayer funds to construct **private** 3G/4G/5G wireless networks and then falsely "claimed" that the **public** fiber optics in the ground and strung on telephone poles is their **private** asset.

One can see the result of such false claims in the March 7, 2023 hearing at the CA Senate Energy Utilities and Communications (SEUC) Committee. Listen to the CA Department of Technology, Deputy Director of Broadband Middle-Mile Initiative, Mark Monroe answer Sen, Dahle's questions at 44:30 in [this video](#) re: **4,000 mile overlap of the State's 10,000 mile middle-mile fiber-optics**

**construction plan and existing fiber-optic infrastructure** that "could be" leased at an affordable rate:

**Mr. Monroe:** "Businesses are really good a math. And sometimes they are not willing to lease to us at the right price. We understand that. We are going to have to do some overbuild there to the extent that we can't lease what is there within the \$3.8 billion."

**Sen. Dahle:** "They're good at math; they're also good at understanding that when there is no competition, they can take advantage of a situation. We passed CA Advanced Services Funds through this Legislature [years ago] and they never tapped into those funds and they said 'well, we can't' . . . there is always a reason. So when we did the Middle-mile bill [SB.156], this is true competition. It opens it up for another company to come in and buy up space on that middle mile and go after that profitable area and, at the same time, they have to serve the underserved areas. This legislature is focused on the underserved areas for people that don't have access . . . the big dogs, AT&T, Comcast and those folks say that we can't do it. They have lines going through my community that I can't tap into because that is supposedly not profitable. So now we are going to put a [fiber-optic] line right next to their [fiber-optic] line . . . at a really high cost to the taxpayer . . . the Utilities have really not stepped up to the plate . . . they have a true monopoly because they take all the good places to make money and they don't take care of the underserved."

Sen. Dahle gets it. AB-965 could address this problem by no longer giving gifts to the very companies that have created and prolonged the "Digital Divide" for their own profits. The cyclical pattern has been easy to spot:

- Create and pre-sell the problem — the "Digital Divide"
- Propose a solution that depends on large government spending and reduced regulation/barriers to infrastructure deployment
- Pass a law that grants Big Telecom favors but does not force Big Telecom companies to serve the unserved.
- The unserved get nothing effective.
- Rinse, lather, repeat. Many times.

**Question:** Will you allow AB-965 to perpetrate this pattern again?

If not, then please read the proposed amendments to AB-965 in Appendix A, below and please fix AB-965 before it goes to the Senate Governance and Finance Committee.

Regards,

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## Appendix A: AB-965 Amendments

To fix AB-965, Assembly Member Carrillo could revert to the original bill text from Feb 14, 2023, returning the bill to its micro-trenching, fiber optic roots and then add the following additional provisions to address the Digital Divide in an effective way:

1. **Grant last-mile wired-broadband providers universal access to fiber-optic lines** that were installed using Californians' ratepayer funds or that are installed in the public rights-of-way. Since 1994, the (CA Public Utilities Commission (CPUC) has allowed telecom incumbents to add fees to telephone bills for the express purpose of replacing legacy copper lines with fiber-optic lines. Californians have been forced to pay those fees under the promise of receiving public fiber-optic lines. This is a prepaid utility contract that cannot lawfully be broken.
2. **Direct the CPUC to set and enforce reasonable, regulated prices** for last-mile wired broadband providers to universally access fiber optics that were installed using Californians' ratepayer funds or that are installed in the public rights-of-way. The CPUC has the authority to set prices here because this is wired telecommunications on ratepayer-financed lines, which can be regulated by the State, per the Oct 2019 DC Cir. ruling in *Mozilla Corp. v. Fed. Commc'ns Comm'n*, 940 F.3d 1 (D.C. Cir. 2019).
3. **Make any permit batch requirements apply only to unserved communities** (i.e. any locality in California which does not have both wired broadband service with at least 25 Mbps download and 3 Mbps upload data transmission speeds and wireless telecommunications service with radio signal strength measured as Received Signal Strength Indicator (RSSI) values between -115 dBm and -85 dBm for any licensed or unlicensed radio frequency in outdoor areas accessible to people, per Title 47 U.S. Code [§ 324](#), Use of Minimum Power.).
4. **Restrict any state and federal funds for addressing the Digital Divide to be used only in areas of that have no provider able to offer 100 Mbps down and 20 Mbps upload speeds**, as confirmed via Microsoft Corp.'s records of data transfer speeds from homes/businesses via Windows 8/10/11 computers connected to the Internet. The reliability of the Microsoft data is discussed in this 2020 [video](#).
5. **Support local control over Wireless Telecommunications Facilities (WTFs)**, consistent with the legislative intent of the 1996 Telecommunications Act, repealing CA state bills AB-57 (from 2015) and AB-537 (from 2021), will remove any deemed-approved ratchets from CA Code, correcting Assemblymember (Asm.) Quirk's past errors and will align CA state code with the 1996-TCA and FCC Orders, which have NO deemed approved ratchets.

### Add Definitions to AB-965

- **"Digital Divide"** :: any locality in California which does not have both wired broadband service with at least 25 Mbps download and 3 Mbps upload data transmission speeds and wireless telecommunications service with radio signal strength measured as Received Signal Strength Indicator (RSSI) values between -115 dBm and -85 dBm for any licensed or unlicensed radio frequency in outdoor areas accessible to people, per Title 47 U.S. Code [§ 324](#), Use of Minimum Power.
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## Appendix B: Trillion \$ Broadband Scandal

Summary adapted from telecom analyst Bruce Kushnick's [book from 2022](#) is which is entitled **The Book of Violations & Egregious Acts: Trillion Dollar Broadband Scandal**

### Over 30 Years, Instead of Competition, Telecom Monopolies Formed Again

The telecom infrastructure in California, and across the U.S. is that of a second-tier nation. Americans pay more for their inferior telecommunications and information services than people in any other advanced, first-world country. Many still cannot get reliable, high-speed internet access services due to overt redlining practices of the incumbent Telecom companies, which caused the Digital Divide.

The 1996 Telecommunications Act opened the Nation's wires to foster telecommunication competition. A flood of small entrepreneurial companies started up to offer voice services, dial-up internet services or even faster speed DSL. By 2001, there were 9,335 small Independent Service Providers (ISPs) in the U.S. who were handling most internet subscriptions.

However, the seven Baby Bell companies, who controlled the wires, attacked these independent ISPs from the very beginning. Over the last two decades, the Baby Bell companies decided that instead of competing they would consolidate. In 2004-2005, they convinced the FCC to shut down competition on the wired networks. Together, they helped to put 7,000 small ISPs out of business and, with the help of the cable companies, essentially stole their customers.

Verizon claimed it would be offering fiber-to-the-home (FTTH) through "FiOS" and AT&T announced "U-Verse." These announcements were just another "bait-and-switch." AT&T misled the FCC because the U-Verse was a copper-to-the-home network and while FiOS was fiber, the commitments to upgrade legacy copper to fiber optics were ignored. By 2006, the holding companies known as AT&T, Verizon and CenturyLink congealed into three non-competing monopolies that controlled specific state public telecommunications utilities and territories.

Then in 2009, the FCC stopped publishing "Statistics on Common Carriers" which had been an annual summary of the state utilities' financials since 1939. The New consolidated Bell monopolies filed for "forbearance" so that they no longer had to provide the FCC with financial information. This essentially was cover-up of the financial audit trail.

The New Bell companies also manipulated the accounting formulas used in the states so that the state public telecommunications utilities were forced to pay major costs of the Bell companies' other lines of business, thus making the wired networks "appear" unprofitable while making their new wireless networks look more profitable than they were or are today.

## **AT&T, Verizon and CenturyLink Created the Digital Divide on Purpose**

Big Telecom companies continue to overserve wealthy communities while redlining lower income communities, ignoring their commitments to serve everyone. In addition, they have gamed the regulatory system so well that there is institutional amnesia on the part of most Americans, who do not know the basic facts about the history of broadband in their state. You may think that there are no state public telecommunications utilities, that the networks are private investments (meaning they can prevent access to much of the fiber-optic backbone), that wireless is part of state public telecommunications utilities or that the Big Telecom companies don't control state territories. **Sadly, none of these common assumptions are correct.**

In this book, we document the commitments that were made to upgrade America with fiber-optic services and reported that **over 80 percent should have been completed.** More importantly, we track all the monies collected by what is now AT&T, Verizon and CenturyLink, their excess profits, rate-increases and tax breaks garnered by promising, state-by-state, that they would replace legacy copper wires with fiber optics. Sadly, no state has ever held these companies accountable for their failure to make good on their universal fiber-optic obligations. **California can now do so in AB-965 and finally fix the decades-old Digital Divide scandal.**

## **A Trillion Dollars of Overcharges is a Lot of Money — an Egregious Act**

And this is a low estimate. Since 1992, these companies got paid about \$500 billion by their local service customers to upgrade the aging copper wires of the state public telecommunications networks and have not done so. Where that money went is a true broadband scandal.

Through a series of bait-and-switch tactics used repeatedly, the Big Telecom companies were able to overcharge customers in many ways that comprised one of the largest accounting scandals in American history at an estimated cost of \$1.3 trillion and counting. This book analyses the grift, overcharging, and diversion of funds that the companies have perpetrated on the American public for several decades.

Over the last 30 years, the New Bell companies repeatedly claimed that they would roll-out a new technology that would transform telecommunications if they got more government money and/or less regulation. These technologies ranged from video-dialtone to ISDN, to fiber optics and now to 4G/5G wireless. And every time they were helped by an army of paid-off politicians, co-opted non-profits, coin-operated research firms and a massive underground skunkworks network that includes the American Legislative Exchange Council (ALEC).

The big telecom companies created the Digital Divide and did so on purpose. It took the COVID-19 so-called pandemic event for Americans to realize that they are not a fiber-optic nation with ultra-fast, affordable broadband-internet access service. Sadly, Americans unwittingly are throwing more money to the same Big Telecom companies, unaware that they have paid repeatedly for network improvements and services that they never received.

## **What California Can Do in 2023 to Finally Fix the Digital Divide**

- Fully address the violations and egregious acts of the incumbent Telecom companies by reversing the cross-subsidies of wireless and the dumping of corporate operations expenses onto the state public telecommunications utilities' books.
- Stop giving the Big Telecom companies that failed to upgrade legacy copper to fiber optics any more state and federal broadband grant money.
- Take back control of California's networks by opening up access of fiber-optic lines to all companies willing to complete last-mile fiber-optics to the premises connections; fiber optic lines in public rights-of-way must remain open to all competitors at a fixed, reasonable regulated price.