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[redacted]

GOVERNMENT CODE SECTION 53167: BROADBAND INTERNET ACCESS SERVICE: DATA CENTERS [redacted]

[redacted]

Pursuant to your request, we are providing this written confirmation of an oral [redacted] October 22, 2026.

Under existing law, certain local governmental agencies, such as county service areas and counties, are authorized to provide "broadband internet access service" within their jurisdictions.[1] Also, an enhanced infrastructure financing district may finance public capital facilities or projects that include the acquisition, construction, or improvement of "broadband internet access service."[2] A local agency providing "broadband internet access service" must comply with the net neutrality requirements described in Government Code title 5, division 2, part 1, chapter 1, article 12 (section 53167 et seq.) (hereafter article 12).[3]

The term "broadband internet access service" is defined for these purposes to mean:

> "[A] mass-market retail service provided by a local agency in California by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service."[4]

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[1] See, e.g., Gov. Code, §§ 25213, subd. (aa) (county service areas) & 26231, subd. (b) (counties). All further statutory references are to the Government Code unless otherwise indicated.

[2] § 53398.52, subd. (b)(19).

[3] §§ 53167.2-53167.5 & 53167, subd (e) (defines "local agency" to mean any agency of local government authorized by any other law to provide broadband internet access service"); see §§ 25213, subd. (aa) (county service areas), 26231, subd. (c) (counties), 61100, subd. (af) (community service districts); Pub. Util. Code, §§ 12801.5 (municipal utility district), 16461.10 (public utility district), 10001.5 (municipal corporation).

[4] § 53167, subd. (a).

You have asked us whether the definition of "broadband internet access service" in section 53167, subdivision (a) would include a building or facility that contains or houses computing or information technology infrastructure for the primary purpose of processing, storing, distributing, or transmitting electronic data (hereafter a data center). You have also asked us whether our conclusion in this regard would apply to other provisions of law incorporating a similar definition of "broadband internet access service" if those other provisions serve a different purpose than that of article 12.

1. First question

We first address whether the definition of "broadband internet access service" in section 53167, subdivision (a) would include a data center.

The term "broadband internet access service" in section 53167, subdivision (a) defines the service of providing broadband internet access to retail customers by means of wire, wireless technology, or radio. The term is defined in connection with imposing net neutrality requirements on a local agency that offers this service to customers consistent with the Federal Communication Commission's 2015 Open Internet Order.[5] These requirements in article 12 address specific business practices related to providing broadband internet access on a nondiscriminatory basis to retail customers, such as prohibiting a local agency from managing its network to directly or indirectly favor some traffic over other traffic in certain circumstances.[6]

A data center is a physical building or facility, not a service. Section 53167, subdivision (a) plainly defines a service in connection with regulating certain business practices involved in providing that service. The language does not expressly or impliedly address matters relating to the operation or construction of a physical building or facility, such as a data center, in connection with the provision of broadband internet access service by a local agency.

Accordingly, it is our opinion that, relative to the net neutrality requirements imposed on local agencies authorized to provide broadband internet access service under existing law, the definition of "broadband internet access service" in section 53167, subdivision (a) does not include a data center.

2. Second question

Having concluded that, for purposes of article 12, the definition of "broadband internet access service" in section 53167, subdivision (a) does not include a data center, we turn to whether this conclusion would apply to other provisions of law that incorporate a similar definition of that term if those other provisions serve a different purpose than that of article 12.

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[5] Under the 2015 Open Internet Order, the Federal Communications Commission established clear, bright-line rules to prevent blocking, throttling, and engaging in paid or affiliated paid prioritization agreements related to the transmission of internet traffic. (Fed. Communications Com., In the Matter of Protecting and Promoting the Open Internet (adopted Feb. 26, 2015) 30 FCC Rcd. 5601, 5647-5660.)

[6] § 53167.4; see also § 53167, subd. (h) (defining "paid prioritization").

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The purpose of statutory construction is to ascertain the intent of the Legislature.[7] The statutory language is generally the most reliable indicator of legislative intent.[8] However, when statutory language is ambiguous, a court may turn to other aids, such as rules of construction, which "express familiar insights about conventional language usage."[9]

One of those rules of construction is that identical language appearing in separate statutory provisions should receive the same interpretation when the statutes cover the same or analogous subject matter and serve the same purpose.[10] In our view, the purpose of article 12 is to regulate business practices related to the provision of broadband internet access services. Thus, our interpretation of the language in section 53167, subdivision (a) would not apply to similar language contained in other provisions of law unless the other provisions serve that purpose.

Accordingly, in our opinion, the conclusion we state above that, for purposes of article 12, the definition of "broadband internet access service" in section 53167, subdivision (a) does not include a data center would not apply to other provisions of law incorporating a similar definition of that term if those other provisions serve a different purpose than that of article 12.

Very truly yours,

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[7] *People v. Andrews* (1999) 75 Cal.App.4th 1173, 1177.
[8] *Klein v. United States of America* (2010) 50 Cal.4th 68, 77.
[9] *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 787.
[10] *Zhang v. Jenevein* (2019) 31 Cal.App.5th 585, 596.

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