AN ACT

1 Amending Titles 53 (Municipalities Generally) and 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, in municipal authorities, further providing for purposes and powers; in alternative form of regulation of telecommunications services, further providing for definitions, for network modernization plans and for additional powers and duties; and providing for electric utility easements.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5607(a) of Title 53 of the Pennsylvania Consolidated Statutes is amended by adding a paragraph to read:

§ 5607. Purposes and powers.

(a) Scope of projects permitted.--Every authority incorporated under this chapter shall be a body corporate and politic and shall be for the purposes of financing working capital; acquiring, holding, constructing, financing, improving, maintaining and operating, owning or leasing, either in the capacity of lessor or lessee, projects of the following kind and
character and providing financing for insurance reserves:

* * *

(19) Publicly owned Internet network infrastructure planning, management and implementation as defined in the articles of incorporation by the governing body. Projects will connect premises to underserved areas as defined by the Federal Communications Commission.

* * *

Section 2. The definition of "broadband" in section 3012 of Title 66 is amended to read:

§ 3012. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Broadband." As follows:

(1) A communication channel using any technology and having a bandwidth equal to or greater than \[1.544 \text{ Mbps}\] in the downstream direction and equal to or greater than \[128 \text{ Kbps}\] in the upstream direction.

(2) The Mbps standards specified in paragraph (1) shall be increased in this definition following any increased standards as determined by the Federal Communications Commission and published in accordance with section 3019(j) (relating to additional powers and duties).

* * *

Section 3. Section 3014(c)(2)(i) and (7), (d)(7), (h) introductory paragraph and (j)(4)(iii) of Title 66 are amended to read:
§ 3014. Network modernization plans.
   * * *
(c) Bona fide retail request program.--A local exchange telecommunications company that elects to amend its network modernization plan pursuant to subsection (b)(2) or (3) shall no later than 90 days after the effective date of its amended plan implement a bona fide retail request program in areas where it does not provide broadband. Not later than 30 days in advance of program implementation, the local exchange telecommunications company shall file with the commission and provide the department with a written description of the program, a sample request for advanced services form for use in the program and the form of any advanced services term subscription agreements customers will be required to execute in connection with receiving the requested services. A bona fide retail request program shall consist of the following:
   * * *
(2) To be considered a bona fide retail request, the written request must include:
   (i) a request that a minimum of 50 retail access lines or 25% of retail access lines within a community, whichever is less, each be provided the same advanced service or comparable advanced services having a bandwidth within 100 kilobits per second (Kbps) of each other. Notwithstanding the foregoing comparable bandwidth limitation, where a request includes individual customer requests for advanced services having equal to or less than [1.544] 25 megabits per second (Mbps) bandwidth in the downstream direction, all lines in the request shall be counted in meeting the minimum line requirement of

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this subparagraph;
    * * *
(7) No advanced service requested and deployed by a local exchange telecommunications company under the bona fide retail request program which has a bandwidth of less than \[1.544 \times 25\] megabits per second (Mbps) in the downstream direction shall be counted as a credit toward the local exchange telecommunications company's broadband deployment obligation under its network modernization plan amended pursuant to subsection (b)(2) or (3).
    * * *
(d) Business attraction or retention program.--
    * * *
(7) No advanced service requested of and deployed by a local exchange telecommunications company under the Business Attraction or Retention Program which has a bandwidth of less than \[1.544 \times 25\] megabits per second (Mbps) in the downstream direction shall be counted as a credit toward the local exchange telecommunication company's broadband deployment obligation under its network modernization plan amended under subsection (b)(2) or (3).
    * * *
(h) Prohibition against political subdivision advanced and broadband services deployment.--Except as provided in 53 Pa.C.S. § 5607(a)(19) (relating to purposes and powers):
    * * *
(j) Education Technology Program.--
    * * *
(4) No later than 90 days after the effective date of this section, the Department of Education shall prescribe the
grant process and the form and manner of the E-Fund application. Grants shall be limited to the funds available in the Education Technology Fund. In awarding grants, the Department of Education shall give priority to applications:

* * *

(iii) that are submitted by school entities that do not have broadband service, provided, however, that nothing in this subsection shall preclude the department from awarding funds to school entities for telecommunications services, infrastructure or facilities that provide bandwidths greater than \(1.544 \times 25\) megabits per second (Mbps).

* * *

Section 4. Section 3019 of Title 66 is amended by adding a subsection to read:

§ 3019. Additional powers and duties.

* * *

(j) Departmental update of broadband standards.--The Secretary of Community and Economic Development shall transmit notice to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin upon the determination by the Federal Communications Commission that broadband is defined to involve speeds in excess of 25 megabits per second (Mbps) in the downstream direction and 3 megabits per second (Mbps) in the upstream direction.

Section 5. Subpart D of Title 66 is amended by adding a chapter to read:

CHAPTER 30A

ELECTRIC UTILITY EASEMENTS

Sec.
§ 30A01. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Attached facility." A broadband facility, broadband network or portion of a broadband network that is located substantially:

(1) aboveground and attached to the electric service infrastructure of an electric utility; or

(2) underground in an electric easement and existing before the delivery of notice in accordance with section 30A02(b) (relating to electric easements, commercial broadband, broadband affiliates and notice required).

"Broadband." As follows:

(1) As defined in section 3012 (relating to definitions).

(2) The term includes cable service, as defined in 47 U.S.C. § 522(6) (relating to definitions).

"Broadband affiliate." A commercial broadband supplier that is a separate legal entity from an electric utility but is controlled by, controls or is under common control with the electric utility.

"Broadband facility." Infrastructure used to deliver or
provide broadband.

"Broadband provider." As follows:

(1) A person that provides broadband.

(2) The term includes a cable operator, as defined in 47 U.S.C. § 522(5).

"Commercial broadband." Either of the following:

(1) Broadband.

(2) Broadband Internet service.

"Commercial broadband supplier." As follows:

(1) Any of the following:

   (i) A provider of broadband Internet service or an existing broadband provider.

   (ii) A person that intends to provide broadband Internet service or broadband.

   (iii) A person that directly or indirectly sells, leases or otherwise transfers an attached facility or a right to install, operate, maintain or use an attached facility for another person's provision of commercial broadband.

   (iv) A person that intends to sell, lease or otherwise transfer an attached facility or a right to install, operate, maintain or use an attached facility for another person's provision of commercial broadband.

(2) The term does not include an electric utility.

"Electric easement." A recorded or unrecorded easement, right-of-way or similar right in or to real property, including prescriptive rights, no matter how acquired, held by an electric utility for the siting of electric service infrastructure or for the purpose of delivering electric service, regardless of whether:
(1) the easement, right-of-way or similar right is exclusively for the provision of electric service or for use in connection with commercial broadband, telecommunication service or another purpose; or

(2) the electric utility or a commercial broadband supplier uses the easement, right-of-way or similar right to provide commercial broadband.

"Electric utility." As follows:

(1) The term includes a nonprofit electric corporation or association.

(2) The term does not include a nonprofit generation and transmission electric corporation or association.

"Interest holder." A property owner or other person with an interest in the real property upon which an electric easement is located.

"Memorandum." A written instrument that includes, at a minimum, the following:

(1) The name and address of the electric utility.

(2) The date on which the notice was mailed.

(3) The information required to be included in a notice under section 30A02(b)(2)(iii) and (iv).

"Notice." A written letter substantially complying with the requirements specified in section 30A02(b)(2), which notice shall be deemed delivered on the date postmarked or otherwise time stamped.

"Person." An individual, firm, partnership, corporation, company, association, joint stock association or other legal entity.

"Property owner." A person with a recorded fee simple interest in real property upon which an electric easement is located.
located.

"Request for notice." A written instrument recorded by an
interest holder in compliance with the requirements specified in
section 30A02(b)(3).

§ 30A02. Electric easements, commercial broadband, broadband
affiliates and notice required.

(a) Permissible actions.--With regard to real property
subject to an electric easement, if an electric utility, or a
commercial broadband supplier designated by the electric utility
to act on behalf of the electric utility, complies with the
notice and filing requirements specified in subsection (b), the
electric utility holding the electric easement may, subject to
subsection (d) and without the consent of an interest holder in
the real property subject to the electric easement, take the
following actions to the extent not already permitted by the
electric easement:

(1) Install, maintain or own, or permit a commercial
broadband supplier, including a broadband affiliate, to
install, maintain or own, an attached facility for operation
by a commercial broadband supplier, including a broadband
affiliate, in providing commercial broadband.

(2) Lease or otherwise provide to a commercial broadband
supplier, including a broadband affiliate, an excess capacity
of attached facilities for the purpose of providing
commercial broadband.

(b) Notice.--

(1) The following apply:

(i) At least 30 days before first exercising rights
under subsection (a) with respect to an electric easement
or portion of an electric easement, an electric utility
or a designated commercial broadband supplier of the electric utility shall:

(A) Send notice to each property owner that holds an interest in the real property subject to the electric easement and any other interest holder that has recorded a request for notice.

(B) File a memorandum in the Office of the Recorder of Deeds in each county in which the electric utility is exercising rights under subsection (a).

(ii) An electric utility or a designated commercial broadband supplier of the electric utility may only commence exercising rights under subsection (a) upon delivery of the required notice under this subsection.

(2) A letter providing notice under this subsection must:

(i) Be sent by certified mail from or on behalf of the electric utility to the property owner and any interest holder that has recorded a request for notice at each of the following, as applicable:

(A) The last known address for the property owner based on the records of the electric utility.

(B) The address listed for the property owner in the records of the appropriate county property assessment office.

(C) The address specified in a request for notice.

(ii) Include the name, address, telephone number and point of contact for the electric utility and, if delivered by a commercial broadband supplier designated
by the electric utility, the name, address, telephone
number and point of contact for the designated commercial
broadband supplier.

(iii) Include the property address, the recording
number, if any, of the electric easement or recorded
memorandum of the electric easement, a general
description of any existing electric service
infrastructure currently located in the electric easement
and the approximate location of the electric easement,
which need not include a legal description, land title
survey, plat or other designation of the exact boundaries
of the electric easement.

(iv) Include:

(A) A citation to this chapter.

(B) A copy of the language of subsection (a)
with an indication of whether the electric utility is
exercising rights under subsection (a)(1) or (2), or
both.

(v) Give an estimated time for the start of
installation or construction with regard to any new
installation or construction that will occur in
connection with the exercise of rights under subsection
(a).

(vi) Include a statement regarding the right and
obligation of the electric utility, or a designated
commercial broadband supplier of the electric utility, to
record a memorandum.

(vii) Include a statement regarding the statute of
limitations for the interest holder to file a claim with
respect to the exercise of rights by the electric
utility.

(3) An interest holder that desires to obtain notice under this chapter at a specific address may file in the Office of the Recorder of Deeds for the county in which the real property is located a request for notice that identifies the interest holder's name and address, the instrument granting the interest holder's interest in the property and the recording number of the instrument or a recorded memorandum of the instrument.

(c) Nature of rights.--Upon exercise of the rights specified in subsection (a), the rights run with the land and are assignable by the electric utility.

(d) Terms and conditions.--

(1) The terms and conditions of a written electric easement apply to an electric utility's uses of the electric easement specified in subsection (a), except those terms and conditions that would prohibit the electric utility's exercise of rights under subsection (a).

(2) A prohibition on aboveground electric service infrastructure contained within a written electric easement constitutes a prohibition on aboveground attached facilities.

(3) In connection with the exercise of rights under subsection (a), an electric utility or a designated commercial broadband supplier of the electric utility shall comply with any notice requirements contained in a written electric easement held by the electric utility related to entering the real property subject to the electric easement or commencing any construction or installation on the real property.

(e) Effect of chapter.--
(1) Nothing in this chapter requires an electric utility to comply with subsection (b) to take action or exercise rights under an electric easement that is already permitted within the scope of the electric easement.

(2) Unless expressly prohibited by the terms of an electric easement, an electric easement shall be deemed to allow an electric utility to install, maintain or own, or permit a third party to install, maintain or own for beneficial use by the electric utility, telecommunications facilities and equipment for use in connection with the provision of electricity by the electric utility.

§ 30A03. Statute of limitations, damages and limitations on damages.

(a) Time periods and applicability.--

(1) No claim or cause of action against an electric utility or a commercial broadband supplier concerning the electric utility's or commercial broadband supplier's exercise of rights under this chapter or any actions that the electric utility or commercial broadband supplier takes before the effective date of this section that, if taken on or after the effective date of this section, would be authorized under section 30A02(a) (relating to electric easements, commercial broadband, broadband affiliates and notice required) may be brought by or on behalf of an interest holder more than two years after the latest of:

(i) The effective date of this section.

(ii) The date of delivery of notice in accordance with section 30A02(b).

(iii) The date of recording of a memorandum in accordance with section 30A02(b).
(2) Subsection (a)(1) does not apply to a claim or cause of action based on:

(i) Physical damage to property.

(ii) Injury to an individual.

(iii) Breach of the terms and conditions of a written electric easement as the terms and conditions apply in accordance with section 30A02(d).

(3) Nothing in this section extends the statutory limitation period applicable to a claim or revives an expired claim.

(b) Limitation and allocation of liability.--

(1) A claim or cause of action to which subsection (a)
(1) applies shall not be brought by or on behalf of an interest holder against a commercial broadband supplier for actions that the commercial broadband supplier has taken under section 30A02(b) on behalf of an electric utility.

(2) Nothing in this subsection prohibits an electric utility and a commercial broadband supplier from contracting to allocate liability for actions taken under section 30A02(b).

(c) Claims or causes of action.--If an interest holder brings a trespass claim, inverse condemnation claim or any other claim or cause of action to which subsection (a)(1) applies for an electric utility's or commercial broadband supplier's exercise of rights or performance of actions described in section 30A02(a), the following apply to the claim or cause of action:

(1) The measure of damages for all claims or causes of action to which subsection (a)(1) applies, taken together, is the fair market value of the reduction in value of the
interest holder's interest in the real property. In determining or providing the fair market value under this paragraph, the following apply:

(i) The following shall not be used and are not admissible as evidence in any proceeding:

(A) Profits, fees or revenue derived from the attached facilities.

(B) The rental value of the real property interest or the electric easement, including the rental value of any attached facilities or an assembled broadband corridor.

(ii) Consideration shall be given to any increase in value to the real property interest resulting from the availability of commercial broadband to the real property underlying the real property interest that arises from the installation of attached facilities.

(2) The interest holder shall make reasonable accommodations for the electric utility or commercial broadband supplier to perform an appraisal or inspection of the real property within 90 days following a written request for an appraisal or inspection. The following apply:

(i) If an interest holder fails to make the accommodations, the electric utility or commercial broadband supplier has no further liability to the interest holder.

(ii) The electric utility or commercial broadband supplier shall promptly provide to the interest holder a copy of an appraisal performed in accordance with this paragraph.

(3) Any damages for a claim or cause of action to which
subsection (a)(1) applies:

(i) are limited to those damages that existed at the
time that the electric utility or commercial broadband
supplier first exercised the rights or performed the
actions; and

(ii) shall not be deemed to continue, accrue or
accumulate.

(4) With regard to a claim or cause of action to which
subsection (a)(1) applies:

(i) Except for an electric utility's or commercial
broadband supplier's failure to comply with section 30A02
(b), negligence or willful misconduct, or in accordance
with the terms and conditions of a written electric
easement as the terms and conditions apply in accordance
with section 30A02(d), an interest holder is not entitled
to:

(A) reimbursement from an electric utility or
commercial broadband supplier for the cost of an
appraisal;

(B) attorney fees; or

(C) an award for special, consequential,
indirect or punitive damages.

(ii) For purposes of this paragraph, an action or
failure to act by an electric utility or commercial
broadband supplier in furtherance of the electric
utility's or commercial broadband supplier's exercise of
rights specified in section 30A02(a) shall not be deemed
negligence or willful misconduct.

(d) Effect of acceptance of damage award.--By accepting a
damage award for a claim or cause of action to which subsection

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(a)(1) applies, an interest holder shall be deemed to have granted an increase in the scope of the electric easement, equal in duration to the term of the electric easement and subject to section 30A02(d), to the extent of the interest holder's rights in the real property, for all of the uses of the real property and actions specified in section 30A02(a).

§ 30A04. Electric utility obligations.

(a) Prohibited and required activities.--An electric utility that exercises rights under section 30A02(a) (relating to electric easements, commercial broadband, broadband affiliates and notice required) for the provision of commercial broadband:

(1) May not discriminate among commercial broadband suppliers, including broadband affiliates, in offering or granting rights to install or attach any attached facilities.

(2) Shall charge fees that are nondiscriminatory among commercial broadband suppliers for a substantially similar lease or use of the capacity of attached facilities owned or controlled by the electric utility, but only to the extent an electric utility chooses, in its sole discretion, to offer the lease or use to a particular commercial broadband supplier.

(b) Broadband affiliate.--If an electric utility that has a broadband affiliate, the broadband affiliate shall:

(1) Charge just and reasonable attachment fees, including recurring fees, that are related to the costs associated with the attachment, such as a just and reasonable share of the carrying costs of the per pole investment, including ongoing maintenance of the pole based on the portion of the usable space on the pole occupied by the attachment.
(2) Provide all commercial broadband suppliers access to all poles and similar support structures owned by the electric utility or broadband affiliate for the purpose of attaching equipment for the provision of commercial broadband. Access provided in accordance with this paragraph shall be provided:

(i) on a just, reasonable and nondiscriminatory basis; and

(ii) under terms and conditions that are no less favorable than the terms and conditions offered to broadband affiliates, including terms and conditions regarding application requirements, technical requirements, electric lineworker health and safety requirements, administrative fees, timelines and make-ready requirements.

(3) Charge fees that are nondiscriminatory among commercial broadband suppliers for a substantially similar lease or use of the capacity of attached facilities owned or controlled by the electric utility or broadband affiliate and that are equal to or less than the fees that the electric utility charges to its broadband affiliates, but only to the extent an electric utility or broadband affiliate chooses, in its sole discretion, to offer the lease or use to a particular commercial broadband supplier.

(c) Effect of section.--Subject to the requirements of subsection (a), nothing in this section requires an electric utility to offer or grant a right to access or use an electric easement or to use attached facilities or electric service infrastructure owned or controlled by the electric utility in a manner that would, in the electric utility's reasonable
discretion, materially interfere with the electric utility's construction, maintenance or use of electric utility infrastructure for the provision of electric service.

(d) Withholding authorization.--

(1) An electric utility with a broadband affiliate shall not unreasonably withhold authorization or delay a decision whether to provide authorization to a commercial broadband supplier to install, maintain, own, operate or use the commercial broadband supplier's attached facilities on electric service infrastructure owned or controlled by the electric utility. An electric utility may only withhold authorization under this subsection if the reason for withholding authorization is that:

   (i) there is insufficient capacity for the attached facilities; or

   (ii) concerns of safety or reliability or generally applicable engineering purposes weigh against granting the authorization.

(2) An electric utility that withholds authorization under this subsection shall promptly notify the commercial broadband supplier in writing of the reasons for withholding authorization.

(e) Retail commercial broadband.--An electric utility may not directly provide retail commercial broadband but may cause or allow a broadband affiliate to offer retail commercial broadband. As long as an electric utility maintains its exclusive right to provide electric service to customers within its exclusive service territory, both the electric utility that has a broadband affiliate and the broadband affiliate:

(1) Shall maintain or cause to be maintained an
accounting system for the broadband affiliate separate from
the electric utility's accounting system, using generally
accepted accounting principles or another reasonable and
customary allocation method.

(2) Shall cause a financial audit to be performed by an
independent certified public accountant, within two years
after commencement of commercial operation of retail
commercial broadband and at least once every two years
thereafter, with respect to the broadband affiliate's
provision of commercial broadband, including an audit of the
allocation of costs for property and services that are used
in both the provision of commercial broadband and the
electric utility's provision of electric service.

(3) May not cause or allow the electric utility to use
its exclusive right to provide electric services within its
exclusive territory to cross-subsidize the broadband
affiliate or its provision of commercial broadband, whether
by below fair market value pricing, payment of capital or
operating costs properly charged to the broadband affiliate
under applicable accounting rules or use of any revenue from
or subsidy for the provision of electric service to provide
commercial broadband below market value, except in connection
with the electric utility's provision of electricity. Nothing
in this paragraph prohibits an electric utility from doing
any of the following:

   (i) Entering into a transaction with a broadband
   affiliate on terms and conditions substantially similar
to those that would be agreed to between two similarly
situated parties in an arm's-length commercial
transaction.
(ii) Lending funds to a broadband affiliate if the interest rate on the loan is no less than the electric utility's lowest cost of capital.

(iii) Exchanging services or materials for other services or materials of equivalent value.

(iv) Providing reduced-cost commercial broadband to low-income retail customers.

(v) Conducting and funding due diligence, operational analysis, entity set-up and associated noncapital expenditures relating to and prior to the establishment of a broadband affiliate.

(f) Certification and dispute.---

(1) Upon request of a commercial broadband supplier, an electric utility and a broadband affiliate subject to this section shall cause an officer of the electric utility and an officer of the broadband affiliate to certify that the electric utility and the broadband affiliate, respectively, are in compliance with this section.

(2) If a dispute arises between an electric utility or its broadband affiliate and an unaffiliated commercial broadband supplier:

(i) Regarding matters addressed in this chapter, the parties to the dispute have standing to file a claim or cause of action in a court of competent jurisdiction in this Commonwealth.

(ii) The following are discoverable and admissible as evidence in court regarding the electric utility's and its broadband affiliate's compliance with this section:

(A) A certification requested and produced in accordance with this subsection.
(B) The terms and conditions applied to the electric utility's or broadband affiliate's offer to or grant of a right to the unaffiliated commercial broadband supplier to install, maintain, own, operate or use attached facilities.

(C) An audit required to be performed under subsection (e).

(g) Federal law.--

(1) Notwithstanding any other provision of this chapter, an electric utility that is subject to regulation under 47 U.S.C. § 224 (relating to pole attachments), and the regulations promulgated by the Federal Communications Commission in accordance with 47 U.S.C. § 224, is not subject to this section.

(2) Nothing in this chapter:

(i) Subjects an electric utility to regulation by the Federal Communications Commission.

(ii) Constitutes an exercise of, or an obligation or intention to exercise, the right of the Commonwealth under 47 U.S.C. § 224(c) to regulate the rates, terms and conditions for pole attachments, as defined in 47 U.S.C. § 224(a)(4).

(iii) Constitutes a certification, or an obligation or intention to certify, to the Federal Communications Commission under 47 U.S.C. § 224.

§ 30A05. Electric power companies.

(a) Right-of-way.--A foreign or domestic corporation organized or chartered for the purpose, among other things, of conducting and maintaining electric power transmission lines for providing power or light by means of electricity for hire shall
have a right-of-way for the construction, operation and
maintenance of the electric power transmission lines through a
patented or unpatented mine or mining claim or other land
without the consent of the owner of the patented or unpatented
mine or mining claim or other land, if the right-of-way is
necessary for the purposes proposed.

(b) Permissible activities.--An electric utility exercising
its rights under subsection (a) may:

(1) Install or allow the installation of an attached
facility.

(2) Exercise any rights available to the electric
utility in connection with the installation.

§ 30A06. Power of companies to contract.

(a) Contracts.--An electric light power, gas or pipeline
company or a municipality may contract with the owner of real
property or a franchise, easement or interest therein over or
under which the line of electric light wire power or pipeline is
proposed to be laid or created for the right-of-way for the
construction, maintenance and operation of electric light wires,
pipes, poles, regulator stations, substations or other property
and for the erection, maintenance, occupation and operation of
offices at suitable distances for the public accommodation.

(b) Permissible activity.--An electric utility exercising
its rights under subsection (a) may, in accordance with this
chapter, install or allow the installation of an attached
facility for commercial broadband.

(c) Definition.--As used in this section, the term
"municipality" means a county, city, borough, incorporated town
or township.

Section 6. This act shall take effect in 90 days.