AN ACT

Amending Title 68 (Real and Personal Property) of the Pennsylvania Consolidated Statutes, providing for broadband services.

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

Section 1. Title 68 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 82

BROADBAND SERVICES

Sec.

8201. Definitions.

8202. Broadband services.

§ 8201. 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:
"Affiliate." A person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person. The term includes subsidiaries, partnerships, joint ventures and other entities that have shared resources, interests or business dealings.

"Broadband facilities." Wires, cables, materials, equipment and other facilities, which are or can be used for the provision of broadband services.

"Broadband service supplier." An electricity, telecommunications, cable operator or Internet supplier or affiliate that constructs, owns or installs new broadband facilities to provide broadband services, at wholesale or retail, using existing electric infrastructure, including, but not limited to, poles and conduit, within an easement. The term includes third parties with which the electric cooperative corporation contracts, licenses or otherwise enters into agreements with for the installation, service or maintenance of broadband infrastructure and provision of broadband services on behalf of the electric cooperative corporation or ITS affiliate.

"Broadband services." As follows:

(1) Service that consists of or includes the provision of broadband that:

   (i) is used to provide access to the Internet; or

   (ii) provides computer processing, information storage, information content or protocol conversion.

(2) The term includes the provision of video services, voice over Internet protocol services, wireless services and Internet protocol-enabled services.

"Easement." A recorded or unrecorded right-of-way, easement or similar property right acquired by eminent domain,
prescription or conveyance that is used or may be used for
transmitting, distributing or providing electric service by
utilizing electric infrastructure.

"Electric cooperative corporation." As defined in 15 Pa.C.S.
§ 7302(a) (relating to application of chapter).

§ 8202. Broadband services.

(a) Broadband facilities.--The following apply:

(1) An electric cooperative corporation or an affiliate
of an electric cooperative corporation may provide broadband
services or construct, operate and maintain broadband
facilities through an existing easement owned, held or used
by the electric cooperative corporation. An electric
cooperative corporation may only supply retail broadband
services through one or more affiliates.

(2) Except as provided for under subsection (b), the
attachment of broadband facilities shall not constitute a
change to the physical use of the easement, interfere with or
impair any vested rights of the property owner subject to the
easement or place an additional burden on the property or
interests of the owner.

(3) A broadband service supplier that is not an electric
cooperative corporation may access and attach broadband
facilities within an electric cooperative corporation's
easement:

(i) if an electric cooperative corporation or its
affiliates have attached broadband facilities to provide
retail or wholesale broadband services or if an electric
cooperative corporation, in its sole discretion, gives
express written permission to a broadband service
provider SUPPLIER to utilize an existing electric

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easement; and

(ii) subject to the terms of applicable safety standards, the structural integrity of the electric infrastructure and the electric cooperative corporation's rules and fees for the attachments.

(4) An electric cooperative corporation that elects to provide RETAIL broadband services, THROUGH AN AFFILIATE, as a broadband service supplier shall permit other providers SUPPLIERS of such services nondiscriminatory access to attach to electric infrastructure, owned or controlled by the electric cooperative corporation, pursuant to the rates, terms and conditions comparable to and no less favorable than those offered to an affiliate of an electric cooperative corporation engaged in the provision of retail broadband services. NOTHING IN THIS PARAGRAPH SHALL LIMIT, AMEND, SUPERSEDE OR OTHERWISE ALTER THE RATES, TERMS AND CONDITIONS ESTABLISHED UNDER EXISTING WRITTEN ATTACHMENT AGREEMENTS FOR THE TERM OF SUCH AGREEMENTS EXCEPT AS PROVIDED UNDER SUBPARAGRAPH (III). THE FOLLOWING SHALL APPLY:

(I) EXCEPT AS PROVIDED UNDER SUBPARAGRAPH (II), AN ELECTRIC COOPERATIVE CORPORATION SHALL PROVIDE WRITTEN NOTICE, BY FIRST CLASS MAIL, TO ANY BROADBAND SERVICE SUPPLIER WITH WHICH IT HAS AN EXISTING WRITTEN AGREEMENT GOVERNING THE BROADBAND SERVICE SUPPLIER'S ATTACHMENTS TO ELECTRIC INFRASTRUCTURE OWNED OR CONTROLLED BY THE ELECTRIC COOPERATIVE CORPORATION, WITHIN 90 DAYS OF THE DATE ON WHICH AN ELECTRIC COOPERATIVE CORPORATION'S AFFILIATE BEGINS OFFERING RETAIL BROADBAND SERVICES OVER BROADBAND FACILITIES.

(II) AN ELECTRIC COOPERATIVE CORPORATION THAT IS
PROVIDING RETAIL BROADBAND SERVICE THROUGH AN AFFILIATE
AS OF THE EFFECTIVE DATE OF THIS SECTION SHALL NOT BE
REQUIRED TO SEND THE NOTICE REQUIRED UNDER SUBPARAGRAPH
(I).

(III) FOR A PERIOD OF FIVE YEARS FROM RECEIPT OF THE
NOTICE REQUIRED UNDER SUBPARAGRAPH (I), OR FROM THE
EFFECTIVE DATE OF THIS SECTION IF SUBPARAGRAPH (II)
APPLIES, A BROADBAND SERVICE SUPPLIER THAT HAS AN
EXISTING WRITTEN ATTACHMENT AGREEMENT WITH THE ELECTRIC
COOPERATIVE CORPORATION SHALL HAVE THE RIGHT TO ATTACH TO
THE POLES OF THAT ELECTRIC COOPERATIVE CORPORATION AT
RATES THAT SHALL NOT EXCEED THE THEN-EFFECTIVE RATES IN
THE EXISTING AGREEMENT, SUBJECT TO PERMISSIBLE PERIODIC
RATE ADJUSTMENTS PROVIDED IN THE EXISTING AGREEMENT.

(5) AN ELECTRIC COOPERATIVE CORPORATION MAY NOT DO ANY
OF THE FOLLOWING:

(I) REQUIRE A PERSON TO PURCHASE BROADBAND SERVICES
FROM AN AFFILIATE OF THE ELECTRIC COOPERATIVE CORPORATION
AS A CONDITION OF RECEIVING OR CONTINUING TO RECEIVE
ELECTRIC ENERGY FROM THE ELECTRIC COOPERATIVE
CORPORATION; OR

(II) DISCONNECT, OR THREATEN TO DISCONNECT, ELECTRIC
SERVICE TO A CUSTOMER DUE TO THE CUSTOMER'S FAILURE TO
PAY FOR BROADBAND SERVICES PROVIDED TO THE CUSTOMER BY
THE ELECTRIC COOPERATIVE CORPORATION OR AN AFFILIATE.

(b) Applicability.--Except for the replacement or relocation
of existing poles or as otherwise provided by law, subsection
(a)(2) shall not apply to the attachment of broadband facilities
that are additional freestanding or ground-based structures
within the easement.
(C) CROSS-SUBSIDIZATION.--THE FOLLOWING SHALL APPLY:

(1) AN ELECTRIC COOPERATIVE CORPORATION THAT SUPPLIES RETAIL BROADBAND SERVICES THROUGH AN AFFILIATE SHALL ENSURE THAT THE RATES CHARGED FOR THE PROVISION OF ELECTRIC SERVICE DO NOT INCLUDE ANY OF ITS AFFILIATE'S RETAIL BROADBAND SERVICE COSTS AND SHALL NOT USE ITS ELECTRIC SERVICE REVENUES TO SUBSIDIZE THE PROVISION OF RETAIL BROADBAND SERVICES TO THE PUBLIC BY AN AFFILIATE.

(2) AN ELECTRIC COOPERATIVE CORPORATION MAY MAKE CAPITAL INVESTMENTS IN AN AFFILIATE, MAKE LOANS FOR THE BENEFIT OF AN AFFILIATE, ENTER INTO CAPITAL OR OPERATING LEASES WITH THE AN AFFILIATE AND ENTER INTO GUARANTEES OR OTHER SECURITY ARRANGEMENTS FOR THE BENEFIT OF THE AN AFFILIATE, ALL OF WHICH MAY BE IN AMOUNTS, ON TERMS AND SUBJECT TO CONDITIONS AS THE ELECTRIC COOPERATIVE CORPORATION'S BOARD OF DIRECTORS APPROVES AND DETERMINES TO BE PRUDENT OR APPROPRIATE.

(D) Construction.--Except as otherwise provided under this chapter, nothing in this chapter shall limit any of the rights that exist under the laws of this Commonwealth of any broadband service supplier to secure its own easements for the construction or installation of broadband facilities or the provision of broadband services OR TO NEGOTIATE SEPARATE TERMS OR AGREEMENTS FOR ATTACHMENTS TO ELECTRIC INFRASTRUCTURE, OWNED OR CONTROLLED BY AN ELECTRIC COOPERATIVE CORPORATION.

Section 2. This act shall take effect in 60 days.