

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2438 Session of 2020

INTRODUCED BY OWLETT, CAUSER, PICKETT, RYAN, KULIK, SCHLEGEL
CULVER, DONATUCCI, CONKLIN, READSHAW, KAUFER, BOBACK, KEEFER,
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BERNSTINE, IRVIN, LONGIETTI, KAUFFMAN, GLEIM, ZIMMERMAN,
WHEELAND, SCHWEYER, DELOZIER, DUSH, DAVANZO, KORTZ, JAMES AND
HELM, APRIL 27, 2020

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, OCTOBER 19, 2020

AN ACT

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

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

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

8 CHAPTER 82

9 BROADBAND SERVICES

10 Sec.

11 8201. Definitions.

12 8202. Broadband services.

13 § 8201. Definitions.

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

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

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

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

20 "Broadband services." As follows:

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

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

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

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

29 "Easement." A recorded or unrecorded right-of-way, easement
30 or similar property right acquired by eminent domain,

1 prescription or conveyance that is used or may be used for
2 transmitting, distributing or providing electric service by
3 utilizing electric infrastructure.

4 "Electric cooperative corporation." As defined in 15 Pa.C.S.
5 § 7302(a) (relating to application of chapter).

6 § 8202. Broadband services.

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

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

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

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

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

<--

1 easement; and

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

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

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

30 (II) AN ELECTRIC COOPERATIVE CORPORATION THAT IS

1 PROVIDING RETAIL BROADBAND SERVICE THROUGH AN AFFILIATE
2 AS OF THE EFFECTIVE DATE OF THIS SECTION SHALL NOT BE
3 REQUIRED TO SEND THE NOTICE REQUIRED UNDER SUBPARAGRAPH
4 (I).

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

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

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

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

26 (b) Applicability.--Except for the replacement or relocation
27 of existing poles or as otherwise provided by law, subsection
28 (a) (2) shall not apply to the attachment of broadband facilities
29 that are additional freestanding or ground-based structures
30 within the easement.

1 (C) CROSS-SUBSIDIZATION.--THE FOLLOWING SHALL APPLY: <--

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

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

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

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