
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 63 Session of
2019

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SCHWEYER AND McCLINTON, FEBRUARY 5, 2019

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, FEBRUARY 5, 2019

A RESOLUTION

1 Directing the Legislative Budget and Finance Committee and the
2 Joint State Government Commission to jointly conduct an
3 audit and study on the compliance of nonrural
4 telecommunication carriers with the Public Utility Code and
5 high-speed broadband universal service deployment mandates
6 and to report their findings and recommendations to the House
7 of Representatives.

8 WHEREAS, The purpose of 66 Pa.C.S. Ch. 30 was to ensure that
9 all areas of this Commonwealth have a modern, state-of-the-art
10 broadband telecommunications network by the end of 2015, with
11 incumbent local exchange telecommunications companies (ILETCs)
12 receiving substantially greater pricing and earnings flexibility
13 than the traditional rate-of-return form of regulation under
14 which the prices and earnings had originally been set to fund
15 the deployment of high-speed broadband networks throughout this
16 Commonwealth; and

17 WHEREAS, The intended goal of 66 Pa.C.S. Ch. 30 was to
18 promote an accelerated roll-out of a mass market and universal
19 broadband network which would establish this Commonwealth as a

1 national leader in broadband deployment; and

2 WHEREAS, Chapter 30 of 66 Pa.C.S., which added sections 3001
3 through 3009, was enacted and made effective immediately through
4 Act 67 of 1993; and

5 WHEREAS, In 1993, nonrural telecommunications carriers
6 operating in this Commonwealth adopted an alternative form of
7 regulation and network modernization plans to replace existing
8 copper-based network infrastructure with a hybrid of fiber optic
9 and coaxial cables to deliver high-speed broadband at speeds of
10 at least 45 megabits per second (Mbps) in both directions
11 throughout 100% of their urban, suburban and rural service
12 territories by the end of 2015; and

13 WHEREAS, In their first two biennial updates, nonrural
14 telecommunications carriers reiterated their commitment to
15 deploy high-speed broadband at speeds of 45 Mbps or greater to
16 customer locations within five business days even though the
17 statutory minimum for universal broadband availability was 1.544
18 Mbps; and

19 WHEREAS, In June 2000, nonrural telecommunications carriers
20 filed their third biennial update with the Pennsylvania Public
21 Utility Commission (PUC) requesting approval of substantial
22 revisions to their network modernization plans that would retain
23 their existing distribution system of obsolete copper wire pairs
24 to deploy high-speed broadband at 1.544 Mbps through digital
25 subscriber line (DSL) services instead of replacing the network
26 with a hybrid of fiber optic and coaxial cables to deliver high-
27 speed broadband at speeds of at least 45 Mbps in both
28 directions, while obtaining financial benefits as a result of 66
29 Pa.C.S. Ch. 30; and

30 WHEREAS, In March 2002, the PUC rejected the nonrural

1 telecommunications carriers' third biennial update and concluded
2 that nonrural telecommunications carriers unilaterally changed
3 the broadband commitment without properly notifying the PUC,
4 stating that:

5 (1) half of the nonrural telecommunications carriers'
6 customers having the capability and willingness to pay for
7 DSL service could not subscribe to the service as a result of
8 distance limitations from the nonrural telecommunications
9 carriers' central offices;

10 (2) even fewer residential customers had DSL service
11 available to them at speeds of 1.544 Mbps or more; and

12 (3) the 1.544 Mbps bandwidth proposed by nonrural
13 telecommunications carriers for those customers was far below
14 the 45 Mbps bandwidth approved in their 1995 network
15 modernization plans and their first two PUC-approved biennial
16 reports in 1996 and 1998;

17 and

18 WHEREAS, In September 2002, nonrural telecommunications
19 carriers filed a petition to amend their network modernization
20 plans to:

21 (1) deploy fiber or comparable technology to remote
22 terminals to make higher bandwidth services available for
23 purchase by more customers;

24 (2) make available, upon customer request, broadband
25 services of at least 1.544 Mbps within five days of a
26 customer's request; and

27 (3) make at least 45 Mbps service available within
28 commercially reasonable times and established DSL deployment
29 benchmarks at various speeds and types of DSL to reach 45% of
30 rural lines by 2006;

1 and

2 WHEREAS, In July 2003, the PUC officially permitted nonrural
3 telecommunications carriers to break the commitment to the
4 Commonwealth to deploy a 45 Mbps high-speed hybrid fiber optic
5 and coaxial cable broadband network and replaced that commitment
6 with a mandate to deploy broadband at a speed of 1.544 Mbps with
7 the following benchmarks regarding each urban, suburban or rural
8 exchange:

9 (1) 50% by 2004;

10 (2) 60% by 2006;

11 (3) 70% by 2008;

12 (4) 80% by 2010;

13 (5) 90% by 2012; and

14 (6) 100% by 2015;

15 and

16 WHEREAS, In July 2003, the PUC order also directed nonrural
17 telecommunications carriers to upgrade all central offices and
18 existing remote terminals and construct new terminals to provide
19 broadband service at 1.544 Mbps within five days of a customer
20 request; and

21 WHEREAS, Immediately following the sunset of 66 Pa.C.S. Ch.
22 30 on December 31, 2003, the PUC issued a statement of policy to
23 clarify the duties and obligations of ILETCs regarding final PUC
24 orders issued under former 66 Pa.C.S. Ch. 30 and reinforced that
25 previously approved plans would remain in effect and were fully
26 enforceable in all aspects upon all ILETCs; and

27 WHEREAS, Act 183 of 2004 repealed 66 Pa.C.S. §§ 3001-3009 and
28 added §§ 3010-3019 to provide additional economic and regulatory
29 incentives to ILETCs to further facilitate the deployment of a
30 Statewide broadband network by:

1 (1) encouraging earlier completion of existing network
2 modernization plans;

3 (2) reducing the inflation offset under the companies'
4 price cap form of rate regulation;

5 (3) eliminating outdated PUC filing and reporting
6 regulations; and

7 (4) establishing several funds and programs to further
8 facilitate broadband deployment beyond the deployment
9 commitments contained in the companies' network modernization
10 plans, including:

11 (i) a bona fide retail request (BFRR) program;

12 (ii) a business attraction or retention program;

13 (iii) the Broadband Outreach and Aggregation Fund;

14 and

15 (iv) the Education Technology Fund;

16 and

17 WHEREAS, In February 2005, this Commonwealth's nonrural
18 telecommunications carriers filed revised network modernization
19 plans with the PUC to comply with Act 183 of 2004; and

20 WHEREAS, The plans were approved by order entered in May 2005
21 to:

22 (1) require the nonrural telecommunications carriers to
23 retain their commitment of broadband availability to 100% of
24 the total retail access lines by December 31, 2015, under the
25 same benchmarks as outlined in the third supplement to their
26 network modernization plans approved by the PUC in August
27 2004; and

28 (2) allow nonrural telecommunications carriers to reduce
29 the inflation offset of the price stability mechanism from
30 2.93% to 0.5% to generate additional funding dedicated to the

1 deployment of high-speed broadband service at 1.544 Mbps
2 through urban, suburban and rural areas of their service
3 territories;

4 and

5 WHEREAS, In December 2011, this Commonwealth's nonrural
6 telecommunications carriers filed plans to announce their
7 intentions to use other technologies, including fixed wireless,
8 to meet the statutorily mandated broadband deployment
9 benchmarks, stating their commitment to inform the PUC about
10 deploying technologies to make broadband available to customers;
11 and

12 WHEREAS, The filing was approved by Secretarial Letter dated
13 August 2012; and

14 WHEREAS, On September 7, 2012, David K. Ebersole and the
15 Office of Consumer Advocate filed a joint petition seeking a
16 declaratory order and asserting that this Commonwealth's largest
17 nonrural telecommunications carrier did not meet its:

18 (1) legal obligation to the Greensburg community service
19 area (CSA) 1125 BFRR for accelerated deployment of advanced
20 services; and

21 (2) legal broadband deployment obligation because it
22 directed the BFRR applicants to apply to the nonrural
23 telecommunications carrier's wireless affiliate for wireless
24 4G LTE broadband services, which caused the Greensburg CSA
25 customers to believe, for approximately two years, that they
26 would be receiving wireless DSL service to meet their request
27 filed in July 2010;

28 and

29 WHEREAS, In February 2013, the PUC approved a final order and
30 concluded that the PUC cannot specifically require nonrural

1 telecommunications carriers to deploy DSL service to meet the
2 BFRR of the Greensburg CSA 1125 customers or to set a specific
3 price for the retail broadband access service offered those
4 customers as part of the request; and

5 WHEREAS, The PUC approved this Commonwealth's largest
6 nonrural telecommunications carriers' joint venture with its
7 wireless affiliate to provide retail broadband access service to
8 rural BFRR customers; and

9 WHEREAS, The largest nonrural telecommunications carriers'
10 joint venture agreements with its wireless affiliate change a
11 potential alternative provider of broadband service into the
12 carriers' designated provider, which may constitute illegal
13 cross-subsidization under 66 Pa.C.S. § 3016(f)(1) and the
14 corresponding PUC regulations under 52 Pa. Code § 63.143(4)(i);
15 and

16 WHEREAS, The largest nonrural telecommunications carriers'
17 customers who receive wireless broadband services to satisfy a
18 BFRR are required to address any service or billing disputes
19 with the wireless affiliate, further raising cross-subsidization
20 concerns because the carriers' wireless affiliate is an
21 unregulated provider of wireless competitive services and may or
22 may not receive dedicated funding only for the benefit of the
23 carriers' customers where broadband must be deployed, and the
24 funding may or may not be used by the wireless affiliate to
25 offer competitive wireless services to the general public; and

26 WHEREAS, The pricing for the wireless 4G LTE that is provided
27 through the Commonwealth's largest nonrural telecommunications
28 carriers' joint venture is affected by certain data usage caps
29 and tiers, various equipment charges, service reliability issues
30 and contract periods that may exceed the one-year contractual

1 term that is statutorily specified for the routine engagement of
2 retail broadband access service under the BFRR process and could
3 be considered cost prohibitive to rural customers that lack
4 access to alternative broadband service providers and who have
5 paid increased telephone fees for decades to nonrural
6 telecommunications carriers for the deployment of broadband
7 services; and

8 WHEREAS, The promise by nonrural telecommunications carriers
9 to bring fiber Internet or comparable technology to their entire
10 urban, suburban and rural service territories has instead
11 resulted in an estimated 2 million Pennsylvania homes having
12 slower DSL service, unreliable wireless service or no service at
13 all; and

14 WHEREAS, The deployment and adoption of broadband technology
15 in rural communities is a central policy challenge facing this
16 Commonwealth; and

17 WHEREAS, Broadband service is an engine of economic growth
18 that offers rural communities the hope of economic development,
19 the promise of economic revitalization, the energy of an
20 educated productive citizenry and the benefit of a positive
21 quality of life; and

22 WHEREAS, Access to broadband and advanced telecommunication
23 technology is essential for full participation in economic and
24 social life for every Pennsylvanian; and

25 WHEREAS, Consumers in this Commonwealth continue to stress
26 the need for faster digital connections so that local businesses
27 can sell products globally, school children can receive a
28 quality education and farmers can operate high tech equipment,
29 especially in rural areas; and

30 WHEREAS, The Federal Communications Commission's Connect

1 America Fund offers funding to this Commonwealth's largest
2 nonrural telecommunications carrier to build new broadband
3 network infrastructure or upgrade networks in areas where it
4 might not be as profitable, yet hundreds of millions of dollars
5 in Connect America Funds have been declined by the
6 Commonwealth's nonrural telecommunications carriers; therefore
7 be it

8 RESOLVED, That the House of Representatives direct the
9 Legislative Budget and Finance Committee and the Joint State
10 Government Commission to jointly conduct an audit and study on
11 the compliance of nonrural telecommunication carriers with the
12 Public Utility Code and high-speed broadband universal service
13 deployment mandates; and be it further

14 RESOLVED, That the Legislative Budget and Finance Committee
15 and Joint State Government Commission:

16 (1) determine whether nonrural telecommunications
17 carriers have fulfilled their commitments to deploy high-
18 speed broadband to 100% of their urban, suburban and rural
19 services territories by 2015;

20 (2) analyze efforts regarding compliance and
21 administration of BFRR programs under 66 Pa.C.S. § 3014(c),
22 including the number of BFRR requests filed, answered and
23 resolved, the type of broadband services deployed and the
24 time it took to answer, resolve and deploy broadband services
25 resulting from BFRR programs, to determine whether violations
26 of the Public Utility Code exist;

27 (3) analyze whether the nonrural telecommunications
28 carriers' joint ventures with their own wireless affiliates
29 constitute joint ventures under *McRoberts v. Phelps*, 138 A.2d
30 439 (Pa. 1958);

1 (4) determine whether potential violations of 66 Pa.C.S.
2 § 3014(b)(3)(ii)(B), (c) or (k) or 3016(c) or (f) would
3 trigger substantial customer refunds under 66 Pa.C.S. §
4 3015(a)(2) and 66 Pa.C.S. Ch. 33; and

5 (5) determine the nonrural telecommunications carriers'
6 revenue increases and tax write-offs resulting from the
7 enactment of 66 Pa.C.S. Ch. 30 through December 2015,
8 compared to the amount expended by nonrural
9 telecommunications carriers to deploy their high-speed
10 broadband network to 100% of their customer base located in
11 their service territories by an amount per household;

12 and be it further

13 RESOLVED, That the Legislative Budget and Finance Committee
14 and the Joint State Government Commission issue a report of
15 their findings and recommendations, which shall include, but not
16 be limited to:

17 (1) a price and service quality comparison between a
18 nonrural telecommunications carriers' DSL broadband service
19 offering and the 4G LTE wireless broadband service offering
20 to determine whether rural consumers are being unfairly
21 discriminated against by the PUC's approval of the nonrural
22 telecommunications carriers' joint venture with the carrier's
23 wireless affiliate;

24 (2) recommendations regarding whether the PUC should
25 retain jurisdiction over quality of service standards that
26 address the safety, adequacy, reliability and privacy of all
27 telecommunications and broadband services offered by nonrural
28 telecommunications carriers operating under network
29 modernization plans, including the ordering, installation,
30 suspension, termination and restoration of any

1 telecommunications or broadband service provided by a
2 nonrural telecommunications carrier previously determined to
3 be competitive until a universal broadband commitment is
4 achieved as envisioned under 66 Pa.C.S. Ch. 30; and

5 (3) recommendations regarding remedial legislation,
6 including, but not limited to, the imposition of sanctions,
7 fines, penalties or other appropriate actions;

8 and be it further

9 RESOLVED, That the report be issued to the Consumer Affairs
10 Committee of the House of Representatives and the chairperson of
11 the PUC no later than one year after adoption of this
12 resolution.