

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 48 Session of 2019

INTRODUCED BY PHILLIPS-HILL, YAW, HUTCHINSON, COSTA, BAKER, AUMENT, STEFANO, WHITE, BROWNE, HAYWOOD AND BARTOLOTTA, APRIL 29, 2019

SENATOR PHILLIPS-HILL, COMMUNICATIONS AND TECHNOLOGY, AS AMENDED, JUNE 12, 2019

A RESOLUTION

1 Directing the Legislative Budget and Finance Committee to
2 conduct an audit on A REVIEW OF the compliance of <--
3 telecommunication carriers with the Public Utility Code and <--
4 high-speed broadband universal service deployment mandates OF <--
5 THE PUBLIC UTILITY CODE and to report their findings and <--
6 recommendations to the Senate.

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

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

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

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

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

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

29 ~~WHEREAS, In March 2002, the PUC rejected the~~
30 ~~telecommunications carriers' third biennial update and concluded~~

1 ~~that telecommunications carriers unilaterally changed the~~
2 ~~broadband commitment without properly notifying the PUC, stating~~
3 ~~that:~~

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

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

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

16 and

17 ~~WHEREAS, In September 2002, telecommunications carriers filed~~
18 ~~a petition to amend their network modernization plans to:~~

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

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

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

29 and

30 ~~WHEREAS, In July 2003, the PUC officially permitted~~

1 ~~telecommunications carriers to break the commitment to the~~
2 ~~Commonwealth to deploy a 45 Mbps high speed hybrid fiber optic~~
3 ~~and coaxial cable broadband network and replaced that commitment~~
4 ~~with a mandate to deploy broadband at a speed of 1.544 Mbps with~~
5 ~~the following benchmarks regarding each urban, suburban or rural~~
6 ~~exchange:~~

7 ~~(1) 50% by 2004;~~

8 ~~(2) 60% by 2006;~~

9 ~~(3) 70% by 2008;~~

10 ~~(4) 80% by 2010;~~

11 ~~(5) 90% by 2012; and~~

12 ~~(6) 100% by 2015;~~

13 and

14 WHEREAS, In July 2003, ~~the~~ PUC A PENNSYLVANIA PUBLIC UTILITY <--
15 COMMISSION (PUC) order ~~also~~ directed telecommunications carriers <--
16 to upgrade all central offices and existing remote terminals and
17 construct new terminals to provide broadband service at 1.544
18 Mbps within five days of a customer request; and

19 WHEREAS, Immediately following the sunset of 66 Pa.C.S. Ch.
20 30 on December 31, 2003, the PUC issued a statement of policy to
21 clarify the duties and obligations of ILETCs regarding final PUC
22 orders issued under former 66 Pa.C.S. Ch. 30 and reinforced that
23 previously approved plans would remain in effect and were fully
24 enforceable in all aspects upon all ILETCs; and

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

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

1 (2) reducing the inflation offset under the companies'
2 price cap form of rate regulation;
3 (3) eliminating outdated PUC filing and reporting
4 regulations; and
5 (4) establishing several funds and programs to further
6 facilitate broadband deployment beyond the deployment
7 commitments contained in ~~the~~ CERTAIN companies' network <--
8 modernization plans, including:
9 (i) a bona fide retail request (BFRR) program;
10 (ii) a business attraction or retention program;
11 (iii) the Broadband Outreach and Aggregation Fund;
12 and
13 (iv) the Education Technology Fund;

14 and

15 WHEREAS, In February 2005, this Commonwealth's LARGEST <--
16 telecommunications ~~carriers~~ CARRIER filed A revised network <--
17 modernization ~~plans~~ PLAN with the PUC to comply with Act 183 of <--
18 2004; and

19 WHEREAS, The ~~plans were~~ PLAN WAS approved by order entered in <--
20 May 2005 to:

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

27 (2) allow ~~telecommunications carriers~~ THE CARRIER to <--
28 reduce the inflation offset of ~~the~~ ITS price stability <--
29 mechanism from 2.93% to 0.5% to generate additional funding
30 dedicated to the deployment of high-speed broadband service

1 at 1.544 Mbps through urban, suburban and rural areas of
2 ~~their~~ ITS service territories; <--
3 and
4 WHEREAS, In December 2011, this Commonwealth's LARGEST <--
5 telecommunications ~~carriers filed plans to announce their~~ <--
6 ~~intentions~~ CARRIER FILED A PLAN PURSUANT TO STATUTE TO ANNOUNCE <--
7 ITS INTENTION to use other technologies, including fixed
8 wireless, to meet the statutorily mandated broadband deployment
9 benchmarks, stating ~~their~~ ITS 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 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
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

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

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

9 ~~WHEREAS, The largest telecommunications carrier's joint~~ <--
10 ~~venture agreement with its wireless affiliate changes a~~
11 ~~potential alternative provider of broadband service into the~~
12 ~~carrier's 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 telecommunications carrier's customers
17 who receive wireless broadband services to satisfy a BFRR are
18 required to address any service or billing disputes with the
19 wireless affiliate, ~~further raising cross-subsidization concerns~~ <--
20 ~~because the carrier's wireless affiliate~~ WHICH is an unregulated <--
21 provider of wireless competitive services and may or may not
22 receive dedicated funding only for the benefit of the carrier's
23 customers where broadband must be deployed, and the funding may
24 or may not be used by the wireless affiliate to offer
25 competitive wireless services to the general public; and

26 WHEREAS, The pricing for the wireless 4G LTE that is provided
27 through ~~the~~ THIS Commonwealth's largest telecommunications <--
28 carrier's 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 telecommunications
6 carriers for the deployment of broadband services; and

7 ~~WHEREAS, The promise by telecommunications carriers to bring~~
8 ~~fiber Internet or comparable technology to their entire urban,~~
9 ~~suburban and rural service territories has instead resulted in~~
10 ~~an estimated 2,000,000 Pennsylvania homes having slower DSL~~
11 ~~service, unreliable wireless service or no service at all; and~~

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

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

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

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

28 WHEREAS, The Federal Communications Commission's Connect
29 America Fund offered funding to this Commonwealth's largest
30 telecommunications carrier to build new broadband network

1 infrastructure or upgrade networks in areas where it might not
2 be as profitable, yet hundreds of millions of dollars in Connect
3 America Funds have been declined by the carrier; therefore be it

4 RESOLVED, That the Senate direct the Legislative Budget and
5 Finance Committee to conduct ~~an audit on~~ A REVIEW OF the <--
6 compliance of telecommunication carriers with high-speed
7 broadband ~~universal service~~ deployment mandates under the Public <--
8 Utility Code; and be it further

9 RESOLVED, That the Legislative Budget and Finance Committee:

10 (1) determine whether telecommunications carriers have
11 fulfilled their commitments under ~~the Public Utility Code~~ 66 <--
12 PA.C.S. CH.30 to accelerate broadband availability to 100% of
13 their total retail access lines in their distribution
14 networks by December 31, 2015;

15 (2) analyze efforts by the PUC and the Department of
16 Community and Economic Development regarding compliance and
17 administration of BFRR programs under 66 Pa.C.S. § 3014(c);

18 (3) examine joint venture arrangements under approved
19 NMPs for compliance with 66 Pa.C.S. Ch. 30 and analyze the
20 impact of joint venture arrangements on the quality and
21 affordability of service provided; and

22 (4) examine actions taken by the PUC under 66 Pa.C.S. §
23 3015(a)(2) and 66 Pa.C.S. Ch. 33 in relation to violations of
24 66 Pa.C.S. § 3014(b)(3)(ii)(B), (c) or (k) or 3016(c) or (f);
25 and be it further

26 RESOLVED, That the Legislative Budget and Finance Committee
27 issue a report of its findings and recommendations to the Senate
28 within one year of the date of adoption of this resolution.