
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

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INTRODUCED BY PHILLIPS-HILL, SNYDER, BIZZARRO, DAVIS, DRISCOLL,
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PICKETT, WARD, HILL-EVANS AND GROVE, AUGUST 15, 2017

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, AUGUST 15, 2017

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

12 WHEREAS, In their first two biennial updates, nonrural
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, nonrural telecommunications carriers
19 filed their third biennial update with the 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 nonrural
30 telecommunications carriers' third biennial update and concluded

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

4 (1) half of the nonrural telecommunications carriers'
5 customers having the capability and willingness to pay for
6 DSL service could not subscribe to the service as a result of
7 distance limitations from the nonrural telecommunications
8 carriers' central 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 nonrural
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, nonrural telecommunications
18 carriers filed a petition to amend their network modernization
19 plans to:

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

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

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

30 and

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

8 (1) 50% by 2004;

9 (2) 60% by 2006;

10 (3) 70% by 2008;

11 (4) 80% by 2010;

12 (5) 90% by 2012; and

13 (6) 100% by 2015;

14 and

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

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

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

30 (1) encouraging earlier completion of existing network

1 modernization plans;

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

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

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

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

11 (ii) a business attraction or retention program;

12 (iii) the Broadband Outreach and Aggregation Fund;

13 and

14 (iv) the Education Technology Fund;

15 and

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

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

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

27 (2) allow nonrural telecommunications carriers to reduce
28 the inflation offset of the price stability mechanism from
29 2.93% to 0.5% to generate additional funding dedicated to the
30 deployment of high-speed broadband service at 1.544 Mbps

1 through urban, suburban and rural areas of their service
2 territories;

3 and

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

10 and

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

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

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

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

27 and

28 WHEREAS, In February 2013, the PUC approved a final order and
29 concluded that the PUC cannot specifically require nonrural
30 telecommunications carriers to deploy DSL service to meet the

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

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

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

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

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

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

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

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

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

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

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

29 WHEREAS, The Federal Communications Commission's Connect
30 America Fund offers funding to this Commonwealth's largest

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

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

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

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

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

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

30 (4) determine whether potential violations of 66 Pa.C.S.

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

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

11 and be it further

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

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

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

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

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

7 and be it further

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