

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,
HERSHEY, PASHINSKI, NEILSON, MILLARD, BURGOS, STRUZZI, PYLE,
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, SEPTEMBER 22, 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 to utilize an existing electric easement; and

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

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

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

29 (II) AN ELECTRIC COOPERATIVE CORPORATION THAT IS
30 PROVIDING RETAIL BROADBAND SERVICE THROUGH AN AFFILIATE

1 AS OF THE EFFECTIVE DATE OF THIS SECTION SHALL NOT BE
2 REQUIRED TO SEND THE NOTICE REQUIRED UNDER SUBPARAGRAPH
3 (I).

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

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

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

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

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

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

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

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

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

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