
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 48 Session of
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INTRODUCED BY PHILLIPS-HILL, YAW, HUTCHINSON, COSTA, BAKER,
AUMENT, STEFANO, WHITE, BROWNE, HAYWOOD AND BARTOLOTTA,
APRIL 29, 2019

REFERRED TO COMMUNICATIONS AND TECHNOLOGY, APRIL 29, 2019

A RESOLUTION

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

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

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

19 WHEREAS, Chapter 30 of 66 Pa.C.S., which added sections 3001

1 through 3009, was enacted and made effective immediately through
2 Act 67 of 1993; and

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

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

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

28 WHEREAS, In March 2002, the PUC rejected the
29 telecommunications carriers' third biennial update and concluded
30 that telecommunications carriers unilaterally changed the

1 broadband commitment without properly notifying the PUC, stating
2 that:

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

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

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

15 and

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

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

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

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

28 and

29 WHEREAS, In July 2003, the PUC officially permitted
30 telecommunications carriers to break the commitment to the

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

6 (1) 50% by 2004;

7 (2) 60% by 2006;

8 (3) 70% by 2008;

9 (4) 80% by 2010;

10 (5) 90% by 2012; and

11 (6) 100% by 2015;

12 and

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

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

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

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

30 (2) reducing the inflation offset under the companies'

1 price cap form of rate regulation;

2 (3) eliminating outdated PUC filing and reporting
3 regulations; and

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

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

9 (ii) a business attraction or retention program;

10 (iii) the Broadband Outreach and Aggregation Fund;

11 and

12 (iv) the Education Technology Fund;

13 and

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

17 WHEREAS, The plans were approved by order entered in May 2005
18 to:

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

25 (2) allow telecommunications carriers to reduce the
26 inflation offset of the price stability mechanism from 2.93%
27 to 0.5% to generate additional funding dedicated to the
28 deployment of high-speed broadband service at 1.544 Mbps
29 through urban, suburban and rural areas of their service
30 territories;

1 and

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

9 WHEREAS, The filing was approved by Secretarial Letter dated
10 August 2012; and

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

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

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

25 and

26 WHEREAS, In February 2013, the PUC approved a final order and
27 concluded that the PUC cannot specifically require
28 telecommunications carriers to deploy DSL service to meet the
29 BFRR of the Greensburg CSA 1125 customers or to set a specific
30 price for the retail broadband access service offered those

1 customers as part of the request; and

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

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

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

23 WHEREAS, The pricing for the wireless 4G LTE that is provided
24 through the Commonwealth's largest telecommunications carrier's
25 joint venture is affected by certain data usage caps and tiers,
26 various equipment charges, service reliability issues and
27 contract periods that may exceed the one-year contractual term
28 that is statutorily specified for the routine engagement of
29 retail broadband access service under the BFRR process and could
30 be considered cost prohibitive to rural customers that lack

1 access to alternative broadband service providers and who have
2 paid increased telephone fees for decades to telecommunications
3 carriers for the deployment of broadband services; and

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

9 WHEREAS, The deployment and adoption of broadband technology
10 in rural communities is a central policy challenge facing this
11 Commonwealth; and

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

17 WHEREAS, Access to broadband and advanced telecommunication
18 technology is essential for full participation in economic and
19 social life for every Pennsylvanian; and

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

25 WHEREAS, The Federal Communications Commission's Connect
26 America Fund offered funding to this Commonwealth's largest
27 telecommunications carrier to build new broadband network
28 infrastructure or upgrade networks in areas where it might not
29 be as profitable, yet hundreds of millions of dollars in Connect
30 America Funds have been declined by the carrier; therefore be it

1 RESOLVED, That the Senate direct the Legislative Budget and
2 Finance Committee to conduct an audit on the compliance of
3 telecommunication carriers with high-speed broadband universal
4 service deployment mandates under the Public Utility Code; and
5 be it further

6 RESOLVED, That the Legislative Budget and Finance Committee:

7 (1) determine whether telecommunications carriers have
8 fulfilled their commitments under the Public Utility Code to
9 accelerate broadband availability to 100% of their total
10 retail access lines in their distribution networks by
11 December 31, 2015;

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

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

19 (4) examine actions taken by the PUC under 66 Pa.C.S. §
20 3015(a)(2) and 66 Pa.C.S. Ch. 33 in relation to violations of
21 66 Pa.C.S. § 3014(b)(3)(ii)(B), (c) or (k) or 3016(c) or (f);
22 and be it further

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