
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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INTRODUCED BY SNYDER, HILL-EVANS, DAVANZO, LONGIETTI, PASHINSKI,
SCHLOSSBERG, PICKETT, GUENST, DELLOSO, HOWARD, HARRIS, JAMES,
JOZWIAK, GLEIM, ZIMMERMAN, McCLINTON, A. BROWN, O'MARA,
SCHWEYER, NEILSON, N. NELSON, SANCHEZ, STRUZZI, OBERLANDER,
CIRESI AND CEPHAS, JUNE 3, 2021

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JUNE 3, 2021

AN ACT

1 Amending Titles 53 (Municipalities Generally) and 66 (Public
2 Utilities) of the Pennsylvania Consolidated Statutes, in
3 municipal authorities, further providing for purposes and
4 powers; in alternative form of regulation of
5 telecommunications services, further providing for
6 definitions, for network modernization plans and for
7 additional powers and duties; and providing for electric
8 utility easements.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 5607(a) of Title 53 of the Pennsylvania
12 Consolidated Statutes is amended by adding a paragraph to read:
13 § 5607. Purposes and powers.

14 (a) Scope of projects permitted.--Every authority
15 incorporated under this chapter shall be a body corporate and
16 politic and shall be for the purposes of financing working
17 capital; acquiring, holding, constructing, financing, improving,
18 maintaining and operating, owning or leasing, either in the
19 capacity of lessor or lessee, projects of the following kind and

1 character and providing financing for insurance reserves:

2 * * *

3 (19) Publicly owned Internet network infrastructure
4 planning, management and implementation as defined in the
5 articles of incorporation by the governing body. Projects
6 will connect premises to underserved areas as defined by the
7 Federal Communications Commission.

8 * * *

9 Section 2. The definition of "broadband" in section 3012 of
10 Title 66 is amended to read:

11 § 3012. Definitions.

12 The following words and phrases when used in this chapter
13 shall have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 * * *

16 "Broadband." As follows:

17 (1) A communication channel using any technology and
18 having a bandwidth equal to or greater than [1.544] 25
19 megabits per second (Mbps) in the downstream direction and
20 equal to or greater than [128 kilobits per second (Kbps)] 3
21 megabits per second (Mbps) in the upstream direction.

22 (2) The Mbps standards specified in paragraph (1) shall
23 be increased in this definition following any increased
24 standards as determined by the Federal Communications
25 Commission and published in accordance with section 3019(j)
26 (relating to additional powers and duties).

27 * * *

28 Section 3. Section 3014(c)(2)(i) and (7), (d)(7), (h)
29 introductory paragraph and (j)(4)(iii) of Title 66 are amended
30 to read:

1 § 3014. Network modernization plans.

2 * * *

3 (c) Bona fide retail request program.--A local exchange
4 telecommunications company that elects to amend its network
5 modernization plan pursuant to subsection (b)(2) or (3) shall no
6 later than 90 days after the effective date of its amended plan
7 implement a bona fide retail request program in areas where it
8 does not provide broadband. Not later than 30 days in advance of
9 program implementation, the local exchange telecommunications
10 company shall file with the commission and provide the
11 department with a written description of the program, a sample
12 request for advanced services form for use in the program and
13 the form of any advanced services term subscription agreements
14 customers will be required to execute in connection with
15 receiving the requested services. A bona fide retail request
16 program shall consist of the following:

17 * * *

18 (2) To be considered a bona fide retail request, the
19 written request must include:

20 (i) a request that a minimum of 50 retail access
21 lines or 25% of retail access lines within a community,
22 whichever is less, each be provided the same advanced
23 service or comparable advanced services having a
24 bandwidth within 100 kilobits per second (Kbps) of each
25 other. Notwithstanding the foregoing comparable bandwidth
26 limitation, where a request includes individual customer
27 requests for advanced services having equal to or less
28 than [1.544] 25 megabits per second (Mbps) bandwidth in
29 the downstream direction, all lines in the request shall
30 be counted in meeting the minimum line requirement of

1 this subparagraph;

2 * * *

3 (7) No advanced service requested and deployed by a
4 local exchange telecommunications company under the bona fide
5 retail request program which has a bandwidth of less than
6 [1.544] 25 megabits per second (Mbps) in the downstream
7 direction shall be counted as a credit toward the local
8 exchange telecommunications company's broadband deployment
9 obligation under its network modernization plan amended
10 pursuant to subsection (b) (2) or (3).

11 * * *

12 (d) Business attraction or retention program.--

13 * * *

14 (7) No advanced service requested of and deployed by a
15 local exchange telecommunications company under the Business
16 Attraction or Retention Program which has a bandwidth of less
17 than [1.544] 25 megabits per second (Mbps) in the downstream
18 direction shall be counted as a credit toward the local
19 exchange telecommunication company's broadband deployment
20 obligation under its network modernization plan amended under
21 subsection (b) (2) or (3).

22 * * *

23 (h) Prohibition against political subdivision advanced and
24 broadband services deployment.--Except as provided in 53 Pa.C.S.
25 § 5607(a) (19) (relating to purposes and powers):

26 * * *

27 (j) Education Technology Program.--

28 * * *

29 (4) No later than 90 days after the effective date of
30 this section, the Department of Education shall prescribe the

1 grant process and the form and manner of the E-Fund
2 application. Grants shall be limited to the funds available
3 in the Education Technology Fund. In awarding grants, the
4 Department of Education shall give priority to applications:

5 * * *

6 (iii) that are submitted by school entities that do
7 not have broadband service, provided, however, that
8 nothing in this subsection shall preclude the department
9 from awarding funds to school entities for
10 telecommunications services, infrastructure or facilities
11 that provide bandwidths greater than [1.544] 25 megabits
12 per second (Mbps).

13 * * *

14 Section 4. Section 3019 of Title 66 is amended by adding a
15 subsection to read:

16 § 3019. Additional powers and duties.

17 * * *

18 (j) Departmental update of broadband standards.--The
19 Secretary of Community and Economic Development shall transmit
20 notice to the Legislative Reference Bureau for publication in
21 the Pennsylvania Bulletin upon the determination by the Federal
22 Communications Commission that broadband is defined to involve
23 speeds in excess of 25 megabits per second (Mbps) in the
24 downstream direction and 3 megabits per second (Mbps) in the
25 upstream direction.

26 Section 5. Subpart D of Title 66 is amended by adding a
27 chapter to read:

28 CHAPTER 30A

29 ELECTRIC UTILITY EASEMENTS

30 Sec.

1 30A01. Definitions.

2 30A02. Electric easements, commercial broadband, broadband
3 affiliates and notice required.

4 30A03. Statute of limitations, damages and limitations on
5 damages.

6 30A04. Electric utility obligations.

7 30A05. Electric power companies.

8 30A06. Power of companies to contract.

9 § 30A01. Definitions.

10 The following words and phrases when used in this chapter
11 shall have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Attached facility." A broadband facility, broadband network
14 or portion of a broadband network that is located substantially:

15 (1) aboveground and attached to the electric service
16 infrastructure of an electric utility; or

17 (2) underground in an electric easement and existing
18 before the delivery of notice in accordance with section
19 30A02(b) (relating to electric easements, commercial
20 broadband, broadband affiliates and notice required).

21 "Broadband." As follows:

22 (1) As defined in section 3012 (relating to
23 definitions).

24 (2) The term includes cable service, as defined in 47
25 U.S.C. § 522(6) (relating to definitions).

26 "Broadband affiliate." A commercial broadband supplier that
27 is a separate legal entity from an electric utility but is
28 controlled by, controls or is under common control with the
29 electric utility.

30 "Broadband facility." Infrastructure used to deliver or

1 provide broadband.

2 "Broadband provider." As follows:

3 (1) A person that provides broadband.

4 (2) The term includes a cable operator, as defined in 47

5 U.S.C. § 522(5).

6 "Commercial broadband." Either of the following:

7 (1) Broadband.

8 (2) Broadband Internet service.

9 "Commercial broadband supplier." As follows:

10 (1) Any of the following:

11 (i) A provider of broadband Internet service or an
12 existing broadband provider.

13 (ii) A person that intends to provide broadband
14 Internet service or broadband.

15 (iii) A person that directly or indirectly sells,
16 leases or otherwise transfers an attached facility or a
17 right to install, operate, maintain or use an attached
18 facility for another person's provision of commercial
19 broadband.

20 (iv) A person that intends to sell, lease or
21 otherwise transfer an attached facility or a right to
22 install, operate, maintain or use an attached facility
23 for another person's provision of commercial broadband.

24 (2) The term does not include an electric utility.

25 "Electric easement." A recorded or unrecorded easement,
26 right-of-way or similar right in or to real property, including
27 prescriptive rights, no matter how acquired, held by an electric
28 utility for the siting of electric service infrastructure or for
29 the purpose of delivering electric service, regardless of
30 whether:

1 (1) the easement, right-of-way or similar right is
2 exclusively for the provision of electric service or for use
3 in connection with commercial broadband, telecommunication
4 service or another purpose; or

5 (2) the electric utility or a commercial broadband
6 supplier uses the easement, right-of-way or similar right to
7 provide commercial broadband.

8 "Electric utility." As follows:

9 (1) The term includes a nonprofit electric corporation
10 or association.

11 (2) The term does not include a nonprofit generation and
12 transmission electric corporation or association.

13 "Interest holder." A property owner or other person with an
14 interest in the real property upon which an electric easement is
15 located.

16 "Memorandum." A written instrument that includes, at a
17 minimum, the following:

18 (1) The name and address of the electric utility.

19 (2) The date on which the notice was mailed.

20 (3) The information required to be included in a notice
21 under section 30A02(b)(2)(iii) and (iv).

22 "Notice." A written letter substantially complying with the
23 requirements specified in section 30A02(b)(2), which notice
24 shall be deemed delivered on the date postmarked or otherwise
25 time stamped.

26 "Person." An individual, firm, partnership, corporation,
27 company, association, joint stock association or other legal
28 entity.

29 "Property owner." A person with a recorded fee simple
30 interest in real property upon which an electric easement is

1 located.

2 "Request for notice." A written instrument recorded by an
3 interest holder in compliance with the requirements specified in
4 section 30A02(b)(3).

5 § 30A02. Electric easements, commercial broadband, broadband
6 affiliates and notice required.

7 (a) Permissible actions.--With regard to real property
8 subject to an electric easement, if an electric utility, or a
9 commercial broadband supplier designated by the electric utility
10 to act on behalf of the electric utility, complies with the
11 notice and filing requirements specified in subsection (b), the
12 electric utility holding the electric easement may, subject to
13 subsection (d) and without the consent of an interest holder in
14 the real property subject to the electric easement, take the
15 following actions to the extent not already permitted by the
16 electric easement:

17 (1) Install, maintain or own, or permit a commercial
18 broadband supplier, including a broadband affiliate, to
19 install, maintain or own, an attached facility for operation
20 by a commercial broadband supplier, including a broadband
21 affiliate, in providing commercial broadband.

22 (2) Lease or otherwise provide to a commercial broadband
23 supplier, including a broadband affiliate, an excess capacity
24 of attached facilities for the purpose of providing
25 commercial broadband.

26 (b) Notice.--

27 (1) The following apply:

28 (i) At least 30 days before first exercising rights
29 under subsection (a) with respect to an electric easement
30 or portion of an electric easement, an electric utility

1 or a designated commercial broadband supplier of the
2 electric utility shall:

3 (A) Send notice to each property owner that
4 holds an interest in the real property subject to the
5 electric easement and any other interest holder that
6 has recorded a request for notice.

7 (B) File a memorandum in the Office of the
8 Recorder of Deeds in each county in which the
9 electric utility is exercising rights under
10 subsection (a).

11 (ii) An electric utility or a designated commercial
12 broadband supplier of the electric utility may only
13 commence exercising rights under subsection (a) upon
14 delivery of the required notice under this subsection.

15 (2) A letter providing notice under this subsection
16 must:

17 (i) Be sent by certified mail from or on behalf of
18 the electric utility to the property owner and any
19 interest holder that has recorded a request for notice at
20 each of the following, as applicable:

21 (A) The last known address for the property
22 owner based on the records of the electric utility.

23 (B) The address listed for the property owner in
24 the records of the appropriate county property
25 assessment office.

26 (C) The address specified in a request for
27 notice.

28 (ii) Include the name, address, telephone number and
29 point of contact for the electric utility and, if
30 delivered by a commercial broadband supplier designated

1 by the electric utility, the name, address, telephone
2 number and point of contact for the designated commercial
3 broadband supplier.

4 (iii) Include the property address, the recording
5 number, if any, of the electric easement or recorded
6 memorandum of the electric easement, a general
7 description of any existing electric service
8 infrastructure currently located in the electric easement
9 and the approximate location of the electric easement,
10 which need not include a legal description, land title
11 survey, plat or other designation of the exact boundaries
12 of the electric easement.

13 (iv) Include:

14 (A) A citation to this chapter.

15 (B) A copy of the language of subsection (a)
16 with an indication of whether the electric utility is
17 exercising rights under subsection (a)(1) or (2), or
18 both.

19 (v) Give an estimated time for the start of
20 installation or construction with regard to any new
21 installation or construction that will occur in
22 connection with the exercise of rights under subsection
23 (a).

24 (vi) Include a statement regarding the right and
25 obligation of the electric utility, or a designated
26 commercial broadband supplier of the electric utility, to
27 record a memorandum.

28 (vii) Include a statement regarding the statute of
29 limitations for the interest holder to file a claim with
30 respect to the exercise of rights by the electric

1 utility.

2 (3) An interest holder that desires to obtain notice
3 under this chapter at a specific address may file in the
4 Office of the Recorder of Deeds for the county in which the
5 real property is located a request for notice that identifies
6 the interest holder's name and address, the instrument
7 granting the interest holder's interest in the property and
8 the recording number of the instrument or a recorded
9 memorandum of the instrument.

10 (c) Nature of rights.--Upon exercise of the rights specified
11 in subsection (a), the rights run with the land and are
12 assignable by the electric utility.

13 (d) Terms and conditions.--

14 (1) The terms and conditions of a written electric
15 easement apply to an electric utility's uses of the electric
16 easement specified in subsection (a), except those terms and
17 conditions that would prohibit the electric utility's
18 exercise of rights under subsection (a).

19 (2) A prohibition on aboveground electric service
20 infrastructure contained within a written electric easement
21 constitutes a prohibition on aboveground attached facilities.

22 (3) In connection with the exercise of rights under
23 subsection (a), an electric utility or a designated
24 commercial broadband supplier of the electric utility shall
25 comply with any notice requirements contained in a written
26 electric easement held by the electric utility related to
27 entering the real property subject to the electric easement
28 or commencing any construction or installation on the real
29 property.

30 (e) Effect of chapter.--

1 (1) Nothing in this chapter requires an electric utility
2 to comply with subsection (b) to take action or exercise
3 rights under an electric easement that is already permitted
4 within the scope of the electric easement.

5 (2) Unless expressly prohibited by the terms of an
6 electric easement, an electric easement shall be deemed to
7 allow an electric utility to install, maintain or own, or
8 permit a third party to install, maintain or own for
9 beneficial use by the electric utility, telecommunications
10 facilities and equipment for use in connection with the
11 provision of electricity by the electric utility.

12 § 30A03. Statute of limitations, damages and limitations on
13 damages.

14 (a) Time periods and applicability.--

15 (1) No claim or cause of action against an electric
16 utility or a commercial broadband supplier concerning the
17 electric utility's or commercial broadband supplier's
18 exercise of rights under this chapter or any actions that the
19 electric utility or commercial broadband supplier takes
20 before the effective date of this section that, if taken on
21 or after the effective date of this section, would be
22 authorized under section 30A02(a) (relating to electric
23 easements, commercial broadband, broadband affiliates and
24 notice required) may be brought by or on behalf of an
25 interest holder more than two years after the latest of:

26 (i) The effective date of this section.

27 (ii) The date of delivery of notice in accordance
28 with section 30A02(b).

29 (iii) The date of recording of a memorandum in
30 accordance with section 30A02(b).

1 (2) Subsection (a)(1) does not apply to a claim or cause
2 of action based on:

3 (i) Physical damage to property.

4 (ii) Injury to an individual.

5 (iii) Breach of the terms and conditions of a
6 written electric easement as the terms and conditions
7 apply in accordance with section 30A02(d).

8 (3) Nothing in this section extends the statutory
9 limitation period applicable to a claim or revives an expired
10 claim.

11 (b) Limitation and allocation of liability.--

12 (1) A claim or cause of action to which subsection (a)
13 (1) applies shall not be brought by or on behalf of an
14 interest holder against a commercial broadband supplier for
15 actions that the commercial broadband supplier has taken
16 under section 30A02(b) on behalf of an electric utility.

17 (2) Nothing in this subsection prohibits an electric
18 utility and a commercial broadband supplier from contracting
19 to allocate liability for actions taken under section
20 30A02(b).

21 (c) Claims or causes of action.--If an interest holder
22 brings a trespass claim, inverse condemnation claim or any other
23 claim or cause of action to which subsection (a)(1) applies for
24 an electric utility's or commercial broadband supplier's
25 exercise of rights or performance of actions described in
26 section 30A02(a), the following apply to the claim or cause of
27 action:

28 (1) The measure of damages for all claims or causes of
29 action to which subsection (a)(1) applies, taken together, is
30 the fair market value of the reduction in value of the

1 interest holder's interest in the real property. In
2 determining or providing the fair market value under this
3 paragraph, the following apply:

4 (i) The following shall not be used and are not
5 admissible as evidence in any proceeding:

6 (A) Profits, fees or revenue derived from the
7 attached facilities.

8 (B) The rental value of the real property
9 interest or the electric easement, including the
10 rental value of any attached facilities or an
11 assembled broadband corridor.

12 (ii) Consideration shall be given to any increase in
13 value to the real property interest resulting from the
14 availability of commercial broadband to the real property
15 underlying the real property interest that arises from
16 the installation of attached facilities.

17 (2) The interest holder shall make reasonable
18 accommodations for the electric utility or commercial
19 broadband supplier to perform an appraisal or inspection of
20 the real property within 90 days following a written request
21 for an appraisal or inspection. The following apply:

22 (i) If an interest holder fails to make the
23 accommodations, the electric utility or commercial
24 broadband supplier has no further liability to the
25 interest holder.

26 (ii) The electric utility or commercial broadband
27 supplier shall promptly provide to the interest holder a
28 copy of an appraisal performed in accordance with this
29 paragraph.

30 (3) Any damages for a claim or cause of action to which

1 subsection (a) (1) applies:

2 (i) are limited to those damages that existed at the
3 time that the electric utility or commercial broadband
4 supplier first exercised the rights or performed the
5 actions; and

6 (ii) shall not be deemed to continue, accrue or
7 accumulate.

8 (4) With regard to a claim or cause of action to which
9 subsection (a) (1) applies:

10 (i) Except for an electric utility's or commercial
11 broadband supplier's failure to comply with section 30A02
12 (b), negligence or willful misconduct, or in accordance
13 with the terms and conditions of a written electric
14 easement as the terms and conditions apply in accordance
15 with section 30A02(d), an interest holder is not entitled
16 to:

17 (A) reimbursement from an electric utility or
18 commercial broadband supplier for the cost of an
19 appraisal;

20 (B) attorney fees; or

21 (C) an award for special, consequential,
22 indirect or punitive damages.

23 (ii) For purposes of this paragraph, an action or
24 failure to act by an electric utility or commercial
25 broadband supplier in furtherance of the electric
26 utility's or commercial broadband supplier's exercise of
27 rights specified in section 30A02(a) shall not be deemed
28 negligence or willful misconduct.

29 (d) Effect of acceptance of damage award.--By accepting a
30 damage award for a claim or cause of action to which subsection

1 (a)(1) applies, an interest holder shall be deemed to have
2 granted an increase in the scope of the electric easement, equal
3 in duration to the term of the electric easement and subject to
4 section 30A02(d), to the extent of the interest holder's rights
5 in the real property, for all of the uses of the real property
6 and actions specified in section 30A02(a).

7 § 30A04. Electric utility obligations.

8 (a) Prohibited and required activities.--An electric utility
9 that exercises rights under section 30A02(a) (relating to
10 electric easements, commercial broadband, broadband affiliates
11 and notice required) for the provision of commercial broadband:

12 (1) May not discriminate among commercial broadband
13 suppliers, including broadband affiliates, in offering or
14 granting rights to install or attach any attached facilities.

15 (2) Shall charge fees that are nondiscriminatory among
16 commercial broadband suppliers for a substantially similar
17 lease or use of the capacity of attached facilities owned or
18 controlled by the electric utility, but only to the extent an
19 electric utility chooses, in its sole discretion, to offer
20 the lease or use to a particular commercial broadband
21 supplier.

22 (b) Broadband affiliate.--If an electric utility that has a
23 broadband affiliate, the broadband affiliate shall:

24 (1) Charge just and reasonable attachment fees,
25 including recurring fees, that are related to the costs
26 associated with the attachment, such as a just and reasonable
27 share of the carrying costs of the per pole investment,
28 including ongoing maintenance of the pole based on the
29 portion of the usable space on the pole occupied by the
30 attachment.

1 (2) Provide all commercial broadband suppliers access to
2 all poles and similar support structures owned by the
3 electric utility or broadband affiliate for the purpose of
4 attaching equipment for the provision of commercial
5 broadband. Access provided in accordance with this paragraph
6 shall be provided:

7 (i) on a just, reasonable and nondiscriminatory
8 basis; and

9 (ii) under terms and conditions that are no less
10 favorable than the terms and conditions offered to
11 broadband affiliates, including terms and conditions
12 regarding application requirements, technical
13 requirements, electric lineworker health and safety
14 requirements, administrative fees, timelines and make-
15 ready requirements.

16 (3) Charge fees that are nondiscriminatory among
17 commercial broadband suppliers for a substantially similar
18 lease or use of the capacity of attached facilities owned or
19 controlled by the electric utility or broadband affiliate and
20 that are equal to or less than the fees that the electric
21 utility charges to its broadband affiliates, but only to the
22 extent an electric utility or broadband affiliate chooses, in
23 its sole discretion, to offer the lease or use to a
24 particular commercial broadband supplier.

25 (c) Effect of section.--Subject to the requirements of
26 subsection (a), nothing in this section requires an electric
27 utility to offer or grant a right to access or use an electric
28 easement or to use attached facilities or electric service
29 infrastructure owned or controlled by the electric utility in a
30 manner that would, in the electric utility's reasonable

1 discretion, materially interfere with the electric utility's
2 construction, maintenance or use of electric utility
3 infrastructure for the provision of electric service.

4 (d) Withholding authorization.--

5 (1) An electric utility with a broadband affiliate shall
6 not unreasonably withhold authorization or delay a decision
7 whether to provide authorization to a commercial broadband
8 supplier to install, maintain, own, operate or use the
9 commercial broadband supplier's attached facilities on
10 electric service infrastructure owned or controlled by the
11 electric utility. An electric utility may only withhold
12 authorization under this subsection if the reason for
13 withholding authorization is that:

14 (i) there is insufficient capacity for the attached
15 facilities; or

16 (ii) concerns of safety or reliability or generally
17 applicable engineering purposes weigh against granting
18 the authorization.

19 (2) An electric utility that withholds authorization
20 under this subsection shall promptly notify the commercial
21 broadband supplier in writing of the reasons for withholding
22 authorization.

23 (e) Retail commercial broadband.--An electric utility may
24 not directly provide retail commercial broadband but may cause
25 or allow a broadband affiliate to offer retail commercial
26 broadband. As long as an electric utility maintains its
27 exclusive right to provide electric service to customers within
28 its exclusive service territory, both the electric utility that
29 has a broadband affiliate and the broadband affiliate:

30 (1) Shall maintain or cause to be maintained an

1 accounting system for the broadband affiliate separate from
2 the electric utility's accounting system, using generally
3 accepted accounting principles or another reasonable and
4 customary allocation method.

5 (2) Shall cause a financial audit to be performed by an
6 independent certified public accountant, within two years
7 after commencement of commercial operation of retail
8 commercial broadband and at least once every two years
9 thereafter, with respect to the broadband affiliate's
10 provision of commercial broadband, including an audit of the
11 allocation of costs for property and services that are used
12 in both the provision of commercial broadband and the
13 electric utility's provision of electric service.

14 (3) May not cause or allow the electric utility to use
15 its exclusive right to provide electric services within its
16 exclusive territory to cross-subsidize the broadband
17 affiliate or its provision of commercial broadband, whether
18 by below fair market value pricing, payment of capital or
19 operating costs properly charged to the broadband affiliate
20 under applicable accounting rules or use of any revenue from
21 or subsidy for the provision of electric service to provide
22 commercial broadband below market value, except in connection
23 with the electric utility's provision of electricity. Nothing
24 in this paragraph prohibits an electric utility from doing
25 any of the following:

26 (i) Entering into a transaction with a broadband
27 affiliate on terms and conditions substantially similar
28 to those that would be agreed to between two similarly
29 situated parties in an arm's-length commercial
30 transaction.

1 (ii) Lending funds to a broadband affiliate if the
2 interest rate on the loan is no less than the electric
3 utility's lowest cost of capital.

4 (iii) Exchanging services or materials for other
5 services or materials of equivalent value.

6 (iv) Providing reduced-cost commercial broadband to
7 low-income retail customers.

8 (v) Conducting and funding due diligence,
9 operational analysis, entity set-up and associated
10 noncapital expenditures relating to and prior to the
11 establishment of a broadband affiliate.

12 (f) Certification and dispute.--

13 (1) Upon request of a commercial broadband supplier, an
14 electric utility and a broadband affiliate subject to this
15 section shall cause an officer of the electric utility and an
16 officer of the broadband affiliate to certify that the
17 electric utility and the broadband affiliate, respectively,
18 are in compliance with this section.

19 (2) If a dispute arises between an electric utility or
20 its broadband affiliate and an unaffiliated commercial
21 broadband supplier:

22 (i) Regarding matters addressed in this chapter, the
23 parties to the dispute have standing to file a claim or
24 cause of action in a court of competent jurisdiction in
25 this Commonwealth.

26 (ii) The following are discoverable and admissible
27 as evidence in court regarding the electric utility's and
28 its broadband affiliate's compliance with this section:

29 (A) A certification requested and produced in
30 accordance with this subsection.

1 (B) The terms and conditions applied to the
2 electric utility's or broadband affiliate's offer to
3 or grant of a right to the unaffiliated commercial
4 broadband supplier to install, maintain, own, operate
5 or use attached facilities.

6 (C) An audit required to be performed under
7 subsection (e).

8 (g) Federal law.--

9 (1) Notwithstanding any other provision of this chapter,
10 an electric utility that is subject to regulation under 47
11 U.S.C. § 224 (relating to pole attachments), and the
12 regulations promulgated by the Federal Communications
13 Commission in accordance with 47 U.S.C. § 224, is not subject
14 to this section.

15 (2) Nothing in this chapter:

16 (i) Subjects an electric utility to regulation by
17 the Federal Communications Commission.

18 (ii) Constitutes an exercise of, or an obligation or
19 intention to exercise, the right of the Commonwealth
20 under 47 U.S.C. § 224(c) to regulate the rates, terms and
21 conditions for pole attachments, as defined in 47 U.S.C.
22 § 224(a)(4).

23 (iii) Constitutes a certification, or an obligation
24 or intention to certify, to the Federal Communications
25 Commission under 47 U.S.C. § 224.

26 § 30A05. Electric power companies.

27 (a) Right-of-way.--A foreign or domestic corporation
28 organized or chartered for the purpose, among other things, of
29 conducting and maintaining electric power transmission lines for
30 providing power or light by means of electricity for hire shall

1 have a right-of-way for the construction, operation and
2 maintenance of the electric power transmission lines through a
3 patented or unpatented mine or mining claim or other land
4 without the consent of the owner of the patented or unpatented
5 mine or mining claim or other land, if the right-of-way is
6 necessary for the purposes proposed.

7 (b) Permissible activities.--An electric utility exercising
8 its rights under subsection (a) may:

9 (1) Install or allow the installation of an attached
10 facility.

11 (2) Exercise any rights available to the electric
12 utility in connection with the installation.

13 § 30A06. Power of companies to contract.

14 (a) Contracts.--An electric light power, gas or pipeline
15 company or a municipality may contract with the owner of real
16 property or a franchise, easement or interest therein over or
17 under which the line of electric light wire power or pipeline is
18 proposed to be laid or created for the right-of-way for the
19 construction, maintenance and operation of electric light wires,
20 pipes, poles, regulator stations, substations or other property
21 and for the erection, maintenance, occupation and operation of
22 offices at suitable distances for the public accommodation.

23 (b) Permissible activity.--An electric utility exercising
24 its rights under subsection (a) may, in accordance with this
25 chapter, install or allow the installation of an attached
26 facility for commercial broadband.

27 (c) Definition.--As used in this section, the term
28 "municipality" means a county, city, borough, incorporated town
29 or township.

30 Section 6. This act shall take effect in 90 days.