

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0393.01 Jennifer Berman x3286

SENATE BILL 19-107

SENATE SPONSORSHIP

Donovan, Bridges, Fenberg, Fields, Foote, Garcia, Gardner, Ginal, Gonzales, Hisey, Holbert, Lee, Marble, Pettersen, Rankin, Rodriguez, Sonnenberg, Story, Todd, Williams A.

HOUSE SPONSORSHIP

Roberts,

Senate Committees

Business, Labor, & Technology
Local Government

House Committees

Rural Affairs & Agriculture

A BILL FOR AN ACT

101 **CONCERNING THE INSTALLATION OF BROADBAND INTERNET SERVICE**
102 **INFRASTRUCTURE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Section 1 of the bill authorizes an electric utility or other electricity supplier to install and maintain above-ground broadband internet service infrastructure for internal use, for external use in providing broadband internet service, or for lease of any excess capacity to a broadband internet service provider (provider).

Section 1 also authorizes a provider to enter into a contract with a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
April 24, 2019

SENATE
Amended 2nd Reading
April 23, 2019

landowner to access an electric utility's existing easement on the landowner's private property if:

- ! The provider seeks to access the easement to construct or maintain infrastructure to be used in providing broadband internet service;
- ! The provider's access will not violate an exclusivity term in the electric utility's contract with the landowner; and
- ! The electric utility has previously determined that the provider's access would not likely interfere with the electric utility's construction, maintenance, or use of any infrastructure placed on the property.

A provider seeking access to an electric utility's existing easement on private property is required to seek written authorization from the electric utility, which authorization the electric utility shall not unreasonably withhold or delay.

An electric utility authorizing a provider's access to its existing easement on private property may seek reimbursement from the provider for actual and reasonable costs the electric utility incurs as a result of sharing the easement.

The public utilities commission may enforce the requirements set forth in the bill by directing the attorney general to commence an action or proceeding in district court seeking to stop or prevent the violations.

Sections 2 and 3 make conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, add part 6 to article
3 15 of title 40 as follows:

4 **PART 6**

5 **ELECTRIC UTILITY EASEMENTS**

6 **40-15-601. Definitions.** AS USED IN THIS PART 6, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "ATTACHED FACILITY" MEANS A BROADBAND FACILITY, AS
9 DEFINED IN SECTION 38-5.5-102 (2), OR A BROADBAND NETWORK OR ANY
10 PORTION OF A BROADBAND NETWORK, IN EACH CASE LOCATED
11 SUBSTANTIALLY:

12 (a) ABOVEGROUND AND ATTACHED TO AN ELECTRIC UTILITY'S

1 ELECTRIC SERVICE INFRASTRUCTURE; OR
2 (b) UNDERGROUND IN AN ELECTRIC EASEMENT AND EXISTING
3 BEFORE THE DELIVERY OF NOTICE PURSUANT TO SECTION 40-15-602 (2).
4 (2) "BROADBAND AFFILIATE" MEANS A COMMERCIAL BROADBAND
5 SUPPLIER THAT IS A SEPARATE LEGAL ENTITY FROM ANY ELECTRIC UTILITY
6 BUT IS CONTROLLED BY, CONTROLS, OR IS UNDER COMMON CONTROL WITH
7 AN ELECTRIC UTILITY.
8 (3) "COMMERCIAL BROADBAND SERVICE" MEANS "BROADBAND
9 SERVICE", AS THAT TERM IS DEFINED IN SECTION 38-5.5-102 (1), OR
10 BROADBAND INTERNET SERVICE.
11 (4) (a) "COMMERCIAL BROADBAND SUPPLIER" MEANS:
12 (I) A PROVIDER OF BROADBAND INTERNET SERVICE OR AN
13 EXISTING BROADBAND PROVIDER, AS THAT TERM IS DEFINED IN SECTION
14 38-5.5-102 (3), OR A PERSON THAT INTENDS TO PROVIDE BROADBAND
15 INTERNET SERVICE OR BROADBAND SERVICE; OR
16 (II) A PERSON THAT DIRECTLY OR INDIRECTLY SELLS, LEASES, OR
17 OTHERWISE TRANSFERS ATTACHED FACILITIES OR A RIGHT TO INSTALL,
18 OPERATE, MAINTAIN, OR USE ATTACHED FACILITIES FOR ANOTHER
19 PERSON'S PROVISION OF COMMERCIAL BROADBAND SERVICE OR A PERSON
20 THAT INTENDS TO SELL, LEASE, OR OTHERWISE TRANSFER ATTACHED
21 FACILITIES OR A RIGHT TO INSTALL, OPERATE, MAINTAIN, OR USE
22 ATTACHED FACILITIES.
23 (b) "COMMERCIAL BROADBAND SUPPLIER" DOES NOT INCLUDE AN
24 ELECTRIC UTILITY.
25 (5) "ELECTRIC EASEMENT" MEANS A RECORDED OR UNRECORDED
26 EASEMENT, RIGHT-OF-WAY UNDER SECTION 38-4-103 OR OTHERWISE, OR
27 SIMILAR RIGHT IN OR TO REAL PROPERTY, INCLUDING PRESCRIPTIVE

1 RIGHTS, NO MATTER HOW ACQUIRED, HELD BY AN ELECTRIC UTILITY FOR
2 THE SITING OF ELECTRIC SERVICE INFRASTRUCTURE OR FOR THE PURPOSE
3 OF DELIVERING ELECTRIC SERVICE, REGARDLESS OF WHETHER:

4 (a) THE EASEMENT OR OTHER RIGHT IS EXCLUSIVELY FOR THE
5 PROVISION OF ELECTRIC SERVICE OR FOR USE IN CONNECTION WITH
6 COMMERCIAL BROADBAND SERVICE, TELECOMMUNICATION SERVICE, OR
7 ANOTHER PURPOSE; OR

8 (b) THE ELECTRIC UTILITY OR A COMMERCIAL BROADBAND
9 SUPPLIER USES THE EASEMENT OR OTHER RIGHT TO PROVIDE COMMERCIAL
10 BROADBAND SERVICE.

11 (6) "ELECTRIC UTILITY" MEANS A COOPERATIVE ELECTRIC
12 ASSOCIATION, AS DEFINED IN SECTION 40-9.5-102.

13 (7) "INTEREST HOLDER" MEANS A PROPERTY OWNER OR OTHER
14 PERSON WITH AN INTEREST IN THE REAL PROPERTY UPON WHICH AN
15 ELECTRIC EASEMENT IS LOCATED.

16 (8) "MEMORANDUM" MEANS A WRITTEN INSTRUMENT THAT
17 INCLUDES, AT A MINIMUM, THE NAME AND ADDRESS OF THE ELECTRIC
18 UTILITY, THE DATE ON WHICH THE NOTICE WAS MAILED, AND THE
19 INFORMATION REQUIRED TO BE INCLUDED IN A NOTICE UNDER SECTION
20 40-15-602 (2)(b)(III) AND (2)(b)(IV).

21 (9) "NOTICE" MEANS A WRITTEN LETTER SUBSTANTIALLY
22 COMPLYING WITH THE REQUIREMENTS SET FORTH IN SECTION 40-15-602
23 (2)(b), WHICH NOTICE SHALL BE DEEMED DELIVERED ON THE DATE
24 POSTMARKED OR OTHERWISE TIME STAMPED.

25 (10) "PERSON" HAS THE MEANING SET FORTH IN SECTION 40-1-102
26 (10).

27 (11) "PROPERTY OWNER" MEANS A PERSON WITH A RECORDED FEE

1 SIMPLE INTEREST IN REAL PROPERTY UPON WHICH AN ELECTRIC EASEMENT
2 IS LOCATED.

3 (12) "REQUEST FOR NOTICE" MEANS A WRITTEN INSTRUMENT
4 RECORDED BY AN INTEREST HOLDER IN COMPLIANCE WITH THE
5 REQUIREMENTS SET FORTH IN SECTION 40-15-602 (2)(c).

6 **40-15-602. Electric easements - commercial broadband service**
7 **- broadband affiliates - notice required. (1) WITH REGARD TO REAL**
8 **PROPERTY SUBJECT TO AN ELECTRIC EASEMENT, IF AN ELECTRIC UTILITY,**
9 **OR ANY COMMERCIAL BROADBAND SUPPLIER DESIGNATED BY THE**
10 **ELECTRIC UTILITY TO ACT ON ITS BEHALF, COMPLIES WITH THE NOTICE AND**
11 **FILING REQUIREMENTS SET FORTH IN SUBSECTION (2) OF THIS SECTION, THE**
12 **ELECTRIC UTILITY HOLDING THE ELECTRIC EASEMENT MAY, SUBJECT TO**
13 **SUBSECTION (4) OF THIS SECTION AND WITHOUT THE CONSENT OF AN**
14 **INTEREST HOLDER IN THE REAL PROPERTY SUBJECT TO THE ELECTRIC**
15 **EASEMENT, TAKE THE FOLLOWING ACTIONS TO THE EXTENT NOT ALREADY**
16 **PERMITTED BY THE ELECTRIC EASEMENT:**

17 (a) INSTALL, MAINTAIN, OR OWN, OR PERMIT ANY COMMERCIAL
18 BROADBAND SUPPLIER, INCLUDING A BROADBAND AFFILIATE, TO INSTALL,
19 MAINTAIN, OR OWN, AN ATTACHED FACILITY FOR OPERATION BY A
20 COMMERCIAL BROADBAND SUPPLIER, INCLUDING A BROADBAND
21 AFFILIATE, IN PROVIDING COMMERCIAL BROADBAND SERVICE; AND

22 (b) LEASE OR OTHERWISE PROVIDE TO A COMMERCIAL BROADBAND
23 SUPPLIER, INCLUDING A BROADBAND AFFILIATE, ANY EXCESS CAPACITY OF
24 ATTACHED FACILITIES FOR PURPOSES OF PROVIDING COMMERCIAL
25 BROADBAND SERVICE.

26 (2) (a) AT LEAST THIRTY DAYS BEFORE FIRST EXERCISING ITS
27 RIGHTS UNDER ONE OR BOTH OF SUBSECTION (1)(a) OR (1)(b) OF THIS

1 SECTION WITH RESPECT TO AN ELECTRIC EASEMENT OR PORTION OF AN
2 ELECTRIC EASEMENT, AN ELECTRIC UTILITY OR ITS DESIGNATED
3 COMMERCIAL BROADBAND SUPPLIER MUST SEND NOTICE TO EACH
4 PROPERTY OWNER THAT HOLDS AN INTEREST IN THE REAL PROPERTY
5 SUBJECT TO THE ELECTRIC EASEMENT AND ANY OTHER INTEREST HOLDER
6 THAT HAS RECORDED A REQUEST FOR NOTICE AND MUST RECORD A
7 MEMORANDUM IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN
8 EACH COUNTY IN WHICH THE ELECTRIC UTILITY IS EXERCISING ITS RIGHTS
9 UNDER SUBSECTION (1) OF THIS SECTION. AN ELECTRIC UTILITY OR ITS
10 DESIGNATED COMMERCIAL BROADBAND SUPPLIER MAY ONLY COMMENCE
11 EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION UPON
12 DELIVERY OF SUFFICIENT NOTICE.

13 (b) A LETTER PROVIDING NOTICE PURSUANT TO THIS SUBSECTION
14 (2) MUST:

15 (I) BE SENT BY CERTIFIED MAIL FROM OR ON BEHALF OF THE
16 ELECTRIC UTILITY TO THE PROPERTY OWNER AND ANY INTEREST HOLDER
17 THAT HAS RECORDED A REQUEST FOR NOTICE AT EACH OF THE FOLLOWING,
18 AS APPLICABLE:

19 (A) THE LAST KNOWN ADDRESS FOR THE PROPERTY OWNER BASED
20 ON THE ELECTRIC UTILITY'S RECORDS;

21 (B) THE ADDRESS LISTED FOR THE PROPERTY OWNER IN THE
22 RECORDS OF THE OFFICE OF THE COUNTY ASSESSOR; AND

23 (C) THE ADDRESS SET FORTH IN A REQUEST FOR NOTICE;

24 (II) INCLUDE THE NAME, ADDRESS, TELEPHONE NUMBER, AND
25 NAMED POINT OF CONTACT FOR THE ELECTRIC UTILITY AND, IF DELIVERED
26 BY A COMMERCIAL BROADBAND SUPPLIER DESIGNATED BY THE ELECTRIC
27 UTILITY, THE NAME, ADDRESS, TELEPHONE NUMBER, AND NAMED POINT OF

1 CONTACT FOR THE DESIGNATED COMMERCIAL BROADBAND SUPPLIER;
2 (III) INCLUDE THE PROPERTY ADDRESS; THE RECORDING NUMBER,
3 IF ANY, OF THE ELECTRIC EASEMENT OR RECORDED MEMORANDUM OF THE
4 ELECTRIC EASEMENT; A GENERAL DESCRIPTION OF ANY EXISTING ELECTRIC
5 SERVICE INFRASTRUCTURE CURRENTLY LOCATED IN THE ELECTRIC
6 EASEMENT; AND THE APPROXIMATE LOCATION OF THE ELECTRIC
7 EASEMENT, WHICH NEED NOT INCLUDE A LEGAL DESCRIPTION, LAND TITLE
8 SURVEY, PLAT, OR OTHER DESIGNATION OF THE EXACT BOUNDARIES OF
9 THE ELECTRIC EASEMENT;
10 (IV) INCLUDE:
11 (A) A CITATION TO THIS PART 6; AND
12 (B) A COPY OF THE LANGUAGE OF SUBSECTION (1) OF THIS SECTION
13 WITH AN INDICATION OF WHETHER THE ELECTRIC UTILITY IS EXERCISING
14 RIGHTS UNDER ONE OR BOTH OF SUBSECTION (1)(a) OR (1)(b) OF THIS
15 SECTION;
16 (V) GIVE AN ESTIMATED TIME FOR THE START OF INSTALLATION OR
17 CONSTRUCTION WITH REGARD TO ANY NEW INSTALLATION OR
18 CONSTRUCTION THAT WILL OCCUR IN CONNECTION WITH THE EXERCISE OF
19 RIGHTS UNDER SUBSECTION (1) OF THIS SECTION;
20 (VI) INCLUDE A STATEMENT REGARDING THE RIGHT AND
21 OBLIGATION OF THE ELECTRIC UTILITY, OR ITS DESIGNATED COMMERCIAL
22 BROADBAND SUPPLIER, TO RECORD A MEMORANDUM; AND
23 (VII) INCLUDE A STATEMENT REGARDING THE STATUTE OF
24 LIMITATIONS FOR THE INTEREST HOLDER TO FILE A CLAIM WITH RESPECT
25 TO THE ELECTRIC UTILITY'S EXERCISE OF RIGHTS.
26 (c) AN INTEREST HOLDER THAT DESIRES TO OBTAIN NOTICE UNDER
27 THIS PART 6 AT A SPECIFIC ADDRESS MAY FILE IN THE OFFICE OF THE

1 COUNTY CLERK AND RECORDER FOR THE COUNTY IN WHICH THE REAL
2 PROPERTY IS SITUATED A REQUEST FOR NOTICE THAT IDENTIFIES THE
3 INTEREST HOLDER'S NAME AND ADDRESS, THE INSTRUMENT GRANTING THE
4 INTEREST HOLDER'S INTEREST IN THE PROPERTY, AND THE RECORDING
5 NUMBER OF THE INSTRUMENT OR A RECORDED MEMORANDUM OF THE
6 INSTRUMENT.

7 (3) UPON EXERCISE OF THE RIGHTS SET FORTH IN SUBSECTION (1)
8 OF THIS SECTION, THE RIGHTS RUN WITH THE LAND AND ARE ASSIGNABLE
9 BY THE ELECTRIC UTILITY.

10 (4) THE TERMS AND CONDITIONS OF A WRITTEN ELECTRIC
11 EASEMENT APPLY TO AN ELECTRIC UTILITY'S USES OF THE ELECTRIC
12 EASEMENT SET FORTH IN SUBSECTION (1) OF THIS SECTION, EXCEPT THOSE
13 TERMS AND CONDITIONS THAT WOULD PROHIBIT THE ELECTRIC UTILITY'S
14 EXERCISE OF RIGHTS UNDER SUBSECTION (1) OF THIS SECTION. A
15 PROHIBITION ON ABOVEGROUND ELECTRIC SERVICE INFRASTRUCTURE
16 CONTAINED WITHIN A WRITTEN ELECTRIC EASEMENT CONSTITUTES A
17 PROHIBITION ON ABOVEGROUND ATTACHED FACILITIES. IN CONNECTION
18 WITH THE EXERCISE OF RIGHTS UNDER SUBSECTION (1) OF THIS SECTION,
19 AN ELECTRIC UTILITY OR ITS DESIGNATED COMMERCIAL BROADBAND
20 SUPPLIER MUST COMPLY WITH ANY NOTICE REQUIREMENTS CONTAINED IN
21 A WRITTEN ELECTRIC EASEMENT HELD BY THE ELECTRIC UTILITY RELATED
22 TO ENTERING THE REAL PROPERTY SUBJECT TO THE ELECTRIC EASEMENT
23 OR COMMENCING ANY CONSTRUCTION OR INSTALLATION ON THE REAL
24 PROPERTY.

25 (5) NOTHING IN THIS PART 6 REQUIRES AN ELECTRIC UTILITY TO
26 COMPLY WITH SUBSECTION (2) OF THIS SECTION IN ORDER TO TAKE ANY
27 ACTION OR EXERCISE ANY RIGHTS UNDER AN ELECTRIC EASEMENT THAT IS

1 ALREADY PERMITTED WITHIN THE SCOPE OF THE ELECTRIC EASEMENT.
2 UNLESS EXPRESSLY PROHIBITED BY THE TERMS OF AN ELECTRIC
3 EASEMENT, AN ELECTRIC EASEMENT WILL BE DEEMED TO ALLOW AN
4 ELECTRIC UTILITY TO INSTALL, MAINTAIN, OR OWN, OR PERMIT A THIRD
5 PARTY TO INSTALL, MAINTAIN, OR OWN FOR BENEFICIAL USE BY THE
6 ELECTRIC UTILITY, TELECOMMUNICATIONS FACILITIES AND EQUIPMENT
7 FOR USE IN CONNECTION WITH THE ELECTRIC UTILITY'S PROVISION OF
8 ELECTRICITY.

9 **40-15-603. Statute of limitations - damages - limitations on**
10 **damages. (1) (a) NO CLAIM OR CAUSE OF ACTION AGAINST AN ELECTRIC**
11 **UTILITY OR A COMMERCIAL BROADBAND SUPPLIER CONCERNING THE**
12 **ELECTRIC UTILITY'S OR COMMERCIAL BROADBAND SUPPLIER'S EXERCISE OF**
13 **RIGHTS UNDER THIS PART 6 OR ANY ACTIONS THAT THE ELECTRIC UTILITY**
14 **OR COMMERCIAL BROADBAND SUPPLIER TAKES BEFORE THE EFFECTIVE**
15 **DATE OF THIS SECTION THAT, IF TAKEN AFTER THE EFFECTIVE DATE OF THIS**
16 **SECTION, WOULD BE AUTHORIZED UNDER SECTION 40-15-602 (1) MAY BE**
17 **BROUGHT BY OR ON BEHALF OF AN INTEREST HOLDER MORE THAN TWO**
18 **YEARS AFTER THE LATEST OF:**

- 19 **(I) THE EFFECTIVE DATE OF THIS SECTION;**
- 20 **(II) THE DATE OF DELIVERY OF NOTICE PURSUANT TO SECTION**
21 **40-15-602 (2); OR**
- 22 **(III) THE DATE OF RECORDING OF A MEMORANDUM PURSUANT TO**
23 **SECTION 40-15-602 (2).**

24 **(b) SUBSECTION (1)(a) OF THIS SECTION DOES NOT APPLY TO A**
25 **CLAIM OR CAUSE OF ACTION BASED ON:**

- 26 **(I) PHYSICAL DAMAGE TO PROPERTY;**
- 27 **(II) INJURY TO NATURAL PERSONS; OR**

1 (III) BREACH OF THE TERMS AND CONDITIONS OF A WRITTEN
2 ELECTRIC EASEMENT AS THE TERMS AND CONDITIONS APPLY IN
3 ACCORDANCE WITH SECTION 40-15-602 (4).

4 (c) NOTHING IN THIS SECTION 40-15-603 EXTENDS THE STATUTORY
5 LIMITATION PERIOD APPLICABLE TO A CLAIM OR REVIVES AN EXPIRED
6 CLAIM.

7 (2) A CLAIM OR CAUSE OF ACTION TO WHICH SUBSECTION (1)(a) OF
8 THIS SECTION APPLIES SHALL NOT BE BROUGHT BY OR ON BEHALF OF AN
9 INTEREST HOLDER AGAINST A COMMERCIAL BROADBAND SUPPLIER FOR
10 ACTIONS THAT THE COMMERCIAL BROADBAND SUPPLIER HAS TAKEN
11 UNDER SECTION 40-15-602 (2) ON BEHALF OF AN ELECTRIC UTILITY.
12 NOTHING IN THIS SUBSECTION (2) PROHIBITS AN ELECTRIC UTILITY AND A
13 COMMERCIAL BROADBAND SUPPLIER FROM CONTRACTING TO ALLOCATE
14 LIABILITY FOR ACTIONS TAKEN UNDER SECTION 40-15-602 (2).

15 (3) IF AN INTEREST HOLDER BRINGS A TRESPASS CLAIM, INVERSE
16 CONDEMNATION CLAIM, OR ANY OTHER CLAIM OR CAUSE OF ACTION TO
17 WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES FOR AN ELECTRIC
18 UTILITY'S OR COMMERCIAL BROADBAND SUPPLIER'S EXERCISE OF RIGHTS
19 OR PERFORMANCE OF ACTIONS DESCRIBED IN SECTION 40-15-602 (1)(a) OR
20 (1)(b), THE FOLLOWING APPLIES TO THE CLAIM OR CAUSE OF ACTION:

21 (a) THE MEASURE OF DAMAGES FOR ALL CLAIMS OR CAUSES OF
22 ACTION TO WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES, TAKEN
23 TOGETHER, IS THE FAIR MARKET VALUE OF THE REDUCTION IN VALUE OF
24 THE INTEREST HOLDER'S INTEREST IN THE REAL PROPERTY, AS
25 CONTEMPLATED BY SECTION 38-1-121 (1). IN DETERMINING OR PROVIDING
26 THE FAIR MARKET VALUE UNDER THIS SUBSECTION (3)(a):

27 (I) THE FOLLOWING SHALL NOT BE USED AND ARE NOT ADMISSIBLE

1 AS EVIDENCE IN ANY PROCEEDING:

2 (A) PROFITS, FEES, OR REVENUE DERIVED FROM THE ATTACHED
3 FACILITIES; OR

4 (B) THE RENTAL VALUE OF THE REAL PROPERTY INTEREST OR THE
5 ELECTRIC EASEMENT, INCLUDING THE RENTAL VALUE OF ANY ATTACHED
6 FACILITIES OR AN ASSEMBLED BROADBAND CORRIDOR; AND

7 (II) CONSIDERATION MUST BE GIVEN TO ANY INCREASE IN VALUE
8 TO THE REAL PROPERTY INTEREST RESULTING FROM THE AVAILABILITY OF
9 COMMERCIAL BROADBAND SERVICE TO THE REAL PROPERTY UNDERLYING
10 THE REAL PROPERTY INTEREST THAT ARISES FROM THE INSTALLATION OF
11 ATTACHED FACILITIES.

12 (b) THE INTEREST HOLDER MUST MAKE REASONABLE
13 ACCOMMODATIONS FOR THE ELECTRIC UTILITY OR COMMERCIAL
14 BROADBAND SUPPLIER TO PERFORM AN APPRAISAL OR INSPECTION OF THE
15 REAL PROPERTY WITHIN NINETY DAYS FOLLOWING ANY WRITTEN REQUEST
16 FOR AN APPRAISAL OR INSPECTION. IF AN INTEREST HOLDER FAILS TO MAKE
17 SUCH ACCOMMODATIONS, THE ELECTRIC UTILITY OR COMMERCIAL
18 BROADBAND SUPPLIER HAS NO FURTHER LIABILITY TO THE INTEREST
19 HOLDER. THE ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER
20 SHALL PROMPTLY PROVIDE TO THE INTEREST HOLDER A COPY OF ANY
21 APPRAISAL PERFORMED PURSUANT TO THIS SUBSECTION (3)(b).

22 (c) ANY DAMAGES FOR ANY CLAIMS OR CAUSES OF ACTION TO
23 WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES:

24 (I) ARE LIMITED TO THOSE DAMAGES THAT EXISTED AT THE TIME
25 THAT THE ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER FIRST
26 EXERCISED THE RIGHTS OR PERFORMED THE ACTIONS; AND

27 (II) SHALL NOT BE DEEMED TO CONTINUE, ACCRUE, OR

1 ACCUMULATE.

2 (d) WITH REGARD TO A CLAIM OR CAUSE OF ACTION TO WHICH
3 SUBSECTION (1)(a) OF THIS SECTION APPLIES:

4 (I) EXCEPT FOR AN ELECTRIC UTILITY'S OR COMMERCIAL
5 BROADBAND SUPPLIER'S FAILURE TO COMPLY WITH SECTION 40-15-602 (2),
6 NEGLIGENCE, OR WILLFUL MISCONDUCT, OR IN ACCORDANCE WITH THE
7 TERMS AND CONDITIONS OF A WRITTEN ELECTRIC EASEMENT AS THE TERMS
8 AND CONDITIONS APPLY IN ACCORDANCE WITH SECTION 40-15-602 (4), AN
9 INTEREST HOLDER IS NOT ENTITLED TO REIMBURSEMENT FROM AN
10 ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER FOR THE COST
11 OF ANY APPRAISAL, ATTORNEY FEES, OR AWARD FOR SPECIAL,
12 CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES.

13 (II) FOR PURPOSES OF THIS SUBSECTION (3)(d), ANY ACTION OR
14 FAILURE TO ACT BY AN ELECTRIC UTILITY OR COMMERCIAL BROADBAND
15 SUPPLIER IN FURTHERANCE OF THE ELECTRIC UTILITY'S OR COMMERCIAL
16 BROADBAND SUPPLIER'S EXERCISE OF RIGHTS SET FORTH IN SECTION
17 40-15-602 (1) SHALL NOT BE DEEMED NEGLIGENCE OR WILLFUL
18 MISCONDUCT.

19 (4) BY ACCEPTING A DAMAGE AWARD FOR ANY CLAIM OR CAUSE
20 OF ACTION TO WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES, AN
21 INTEREST HOLDER SHALL BE DEEMED TO HAVE GRANTED AN INCREASE IN
22 THE SCOPE OF THE ELECTRIC EASEMENT, EQUAL IN DURATION TO THE TERM
23 OF THE ELECTRIC EASEMENT AND SUBJECT TO SECTION 40-15-602 (4), TO
24 THE EXTENT OF THE INTEREST HOLDER'S RIGHTS IN THE REAL PROPERTY,
25 FOR ALL OF THE USES OF THE REAL PROPERTY AND ACTIONS SET FORTH IN
26 SECTION 40-15-602 (1).

27 **40-15-604. Electric utility obligations. (1) AN ELECTRIC UTILITY**

1 THAT EXERCISES ANY RIGHTS UNDER SECTION 40-15-602 (1)(a) OR (1)(b)
2 FOR THE PROVISION OF COMMERCIAL BROADBAND SERVICE SHALL:

3 (a) NOT DISCRIMINATE AMONG COMMERCIAL BROADBAND
4 SUPPLIERS, INCLUDING BROADBAND AFFILIATES, IN OFFERING OR
5 GRANTING RIGHTS TO INSTALL OR ATTACH ANY ATTACHED FACILITIES; OR

6 (b) CHARGE FEES THAT ARE NONDISCRIMINATORY AMONG
7 COMMERCIAL BROADBAND SUPPLIERS FOR A SUBSTANTIALLY SIMILAR
8 LEASE OR USE OF THE CAPACITY OF ATTACHED FACILITIES OWNED OR
9 CONTROLLED BY THE ELECTRIC UTILITY, BUT ONLY TO THE EXTENT AN
10 ELECTRIC UTILITY CHOOSES, IN ITS SOLE DISCRETION, TO OFFER THE LEASE
11 OR USE TO A PARTICULAR COMMERCIAL BROADBAND SUPPLIER.

12 (2) AN ELECTRIC UTILITY THAT HAS A BROADBAND AFFILIATE AND,
13 IF APPLICABLE, THE BROADBAND AFFILIATE SHALL:

14 (a) CHARGE JUST AND REASONABLE ATTACHMENT FEES,
15 INCLUDING RECURRING FEES, THAT ARE RELATED TO THE COSTS
16 ASSOCIATED WITH SUCH ATTACHMENTS, SUCH AS A JUST AND REASONABLE
17 SHARE OF THE CARRYING COSTS OF THE PER POLE INVESTMENT, INCLUDING
18 ONGOING MAINTENANCE OF THE POLE BASED ON THE PORTION OF THE
19 USABLE SPACE ON THE POLE OCCUPIED BY THE ATTACHMENT:

20 (b) PROVIDE ALL COMMERCIAL BROADBAND SUPPLIERS ACCESS TO
21 ALL POLES AND SIMILAR SUPPORT STRUCTURES OWNED BY THE ELECTRIC
22 UTILITY OR BROADBAND AFFILIATE FOR THE PURPOSE OF ATTACHING
23 EQUIPMENT FOR THE PROVISION OF COMMERCIAL BROADBAND SERVICE.
24 ACCESS PROVIDED IN ACCORDANCE WITH THIS SUBSECTION (2)(b) MUST
25 BE PROVIDED:

26 (I) ON A JUST, REASONABLE, AND NONDISCRIMINATORY BASIS; AND

27 (II) UNDER TERMS AND CONDITIONS THAT ARE NO LESS

1 FAVORABLE THAN THE TERMS AND CONDITIONS OFFERED TO BROADBAND
2 AFFILIATES, INCLUDING TERMS AND CONDITIONS REGARDING APPLICATION
3 REQUIREMENTS, TECHNICAL REQUIREMENTS, ELECTRIC LINEWORKER
4 HEALTH AND SAFETY REQUIREMENTS, ADMINISTRATIVE FEES, TIMELINES,
5 AND MAKE-READY REQUIREMENTS; AND

6 (c) CHARGE FEES THAT ARE NONDISCRIMINATORY AMONG
7 COMMERCIAL BROADBAND SUPPLIERS FOR A SUBSTANTIALLY SIMILAR
8 LEASE OR USE OF THE CAPACITY OF ATTACHED FACILITIES OWNED OR
9 CONTROLLED BY THE ELECTRIC UTILITY OR BROADBAND AFFILIATE AND
10 THAT ARE EQUAL TO OR LESS THAN THE FEES THAT THE ELECTRIC UTILITY
11 CHARGES TO ITS BROADBAND AFFILIATES, BUT ONLY TO THE EXTENT AN
12 ELECTRIC UTILITY OR BROADBAND AFFILIATE CHOOSES, IN ITS SOLE
13 DISCRETION, TO OFFER THE LEASE OR USE TO A PARTICULAR COMMERCIAL
14 BROADBAND SUPPLIER.

15 (3) SUBJECT TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS
16 SECTION, NOTHING IN THIS SECTION REQUIRES AN ELECTRIC UTILITY TO
17 OFFER OR GRANT A RIGHT TO ACCESS OR USE AN ELECTRIC EASEMENT OR
18 TO USE ATTACHED FACILITIES OR ELECTRIC SERVICE INFRASTRUCTURE
19 OWNED OR CONTROLLED BY THE ELECTRIC UTILITY IN A MANNER THAT
20 WOULD, IN THE ELECTRIC UTILITY'S REASONABLE DISCRETION,
21 MATERIALLY INTERFERE WITH THE ELECTRIC UTILITY'S CONSTRUCTION,
22 MAINTENANCE, OR USE OF ANY ELECTRIC UTILITY INFRASTRUCTURE FOR
23 THE PROVISION OF ELECTRIC SERVICE.

24 (4)(a) AN ELECTRIC UTILITY WITH A BROADBAND AFFILIATE SHALL
25 NOT UNREASONABLY WITHHOLD AUTHORIZATION OR DELAY ITS DECISION
26 WHETHER TO PROVIDE AUTHORIZATION TO A COMMERCIAL BROADBAND
27 SUPPLIER TO INSTALL, MAINTAIN, OWN, OPERATE, OR USE THE

1 COMMERCIAL BROADBAND SUPPLIER'S ATTACHED FACILITIES ON ELECTRIC
2 SERVICE INFRASTRUCTURE OWNED OR CONTROLLED BY THE ELECTRIC
3 UTILITY. AN ELECTRIC UTILITY MAY ONLY WITHHOLD AUTHORIZATION
4 PURSUANT TO THIS SUBSECTION (4) IF THE REASON FOR WITHHOLDING
5 AUTHORIZATION IS THAT:

6 (I) THERE IS INSUFFICIENT CAPACITY FOR THE ATTACHED
7 FACILITIES; OR

8 (II) CONCERNS OF SAFETY OR RELIABILITY OR GENERALLY
9 APPLICABLE ENGINEERING PURPOSES WEIGH AGAINST GRANTING THE
10 AUTHORIZATION.

11 (b) AN ELECTRIC UTILITY THAT WITHHOLDS AUTHORIZATION
12 PURSUANT TO THIS SUBSECTION (4) SHALL PROMPTLY NOTIFY THE
13 COMMERCIAL BROADBAND SUPPLIER IN WRITING OF THE REASONS FOR
14 WITHHOLDING AUTHORIZATION.

15 (5) AN ELECTRIC UTILITY SHALL NOT DIRECTLY PROVIDE RETAIL
16 COMMERCIAL BROADBAND SERVICE BUT MAY CAUSE OR ALLOW A
17 BROADBAND AFFILIATE TO OFFER RETAIL COMMERCIAL BROADBAND
18 SERVICE. AS LONG AS AN ELECTRIC UTILITY MAINTAINS ITS EXCLUSIVE
19 RIGHT TO PROVIDE ELECTRIC SERVICE TO CUSTOMERS WITHIN ITS
20 EXCLUSIVE SERVICE TERRITORY, BOTH THE ELECTRIC UTILITY THAT HAS
21 A BROADBAND AFFILIATE AND THE BROADBAND AFFILIATE SHALL:

22 (a) MAINTAIN OR CAUSE TO BE MAINTAINED AN ACCOUNTING
23 SYSTEM FOR THE BROADBAND AFFILIATE SEPARATE FROM THE ELECTRIC
24 UTILITY'S ACCOUNTING SYSTEM, USING GENERALLY ACCEPTED
25 ACCOUNTING PRINCIPLES OR ANOTHER REASONABLE AND CUSTOMARY
26 ALLOCATION METHOD;

27 (b) CAUSE A FINANCIAL AUDIT TO BE PERFORMED BY AN

1 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, WITHIN TWO YEARS AFTER
2 COMMENCEMENT OF COMMERCIAL OPERATION OF RETAIL COMMERCIAL
3 BROADBAND SERVICE AND AT LEAST ONCE EVERY TWO YEARS
4 THEREAFTER, WITH RESPECT TO THE BROADBAND AFFILIATE'S PROVISION
5 OF COMMERCIAL BROADBAND SERVICE, INCLUDING AN AUDIT OF THE
6 ALLOCATION OF COSTS FOR PROPERTY AND SERVICES THAT ARE USED IN
7 BOTH THE PROVISION OF COMMERCIAL BROADBAND SERVICE AND THE
8 ELECTRIC UTILITY'S PROVISION OF ELECTRIC SERVICE; AND

9 (c) (I) NOT CAUSE OR ALLOW THE ELECTRIC UTILITY TO USE ITS
10 EXCLUSIVE RIGHT TO PROVIDE ELECTRIC SERVICES WITHIN ITS EXCLUSIVE
11 TERRITORY TO CROSS-SUBSIDIZE THE BROADBAND AFFILIATE OR ITS
12 PROVISION OF COMMERCIAL BROADBAND SERVICE, WHETHER BY: BELOW
13 FAIR MARKET VALUE PRICING; PAYMENT OF CAPITAL OR OPERATING COSTS
14 PROPERLY CHARGED TO THE BROADBAND AFFILIATE UNDER APPLICABLE
15 ACCOUNTING RULES; OR USE OF ANY REVENUE FROM OR SUBSIDY FOR THE
16 PROVISION OF ELECTRIC SERVICE TO PROVIDE COMMERCIAL BROADBAND
17 SERVICE BELOW MARKET VALUE, EXCEPT IN CONNECTION WITH THE
18 ELECTRIC UTILITY'S PROVISION OF ELECTRICITY.

19 (II) NOTHING IN THIS SUBSECTION (5)(c) PROHIBITS AN ELECTRIC
20 UTILITY FROM:

21 (A) ENTERING INTO A TRANSACTION WITH A BROADBAND
22 AFFILIATE ON TERMS AND CONDITIONS SUBSTANTIALLY SIMILAR TO THOSE
23 THAT WOULD BE AGREED TO BETWEEN TWO SIMILARLY SITUATED PARTIES
24 IN AN ARM'S LENGTH COMMERCIAL TRANSACTION;

25 (B) LOANING FUNDS TO A BROADBAND AFFILIATE IF THE INTEREST
26 RATE ON THE LOAN IS NO LESS THAN THE ELECTRIC UTILITY'S LOWEST COST
27 OF CAPITAL;

1 (C) EXCHANGING SERVICES OR MATERIALS FOR OTHER SERVICES
2 OR MATERIALS OF EQUIVALENT VALUE;

3 (D) PROVIDING REDUCED-COST COMMERCIAL BROADBAND
4 SERVICE TO LOW-INCOME RETAIL CUSTOMERS; OR

5 (E) CONDUCTING AND FUNDING DUE DILIGENCE, OPERATIONAL
6 ANALYSIS, ENTITY SET-UP, AND ASSOCIATED NONCAPITAL EXPENDITURES
7 RELATING TO AND PRIOR TO THE ESTABLISHMENT OF A BROADBAND
8 AFFILIATE.

9 (6) UPON REQUEST OF A COMMERCIAL BROADBAND SUPPLIER, AN
10 ELECTRIC UTILITY AND ANY BROADBAND AFFILIATE SUBJECT TO THIS
11 SECTION SHALL CAUSE AN OFFICER OF THE ELECTRIC UTILITY AND AN
12 OFFICER OF THE BROADBAND AFFILIATE TO CERTIFY THAT THE ELECTRIC
13 UTILITY AND THE BROADBAND AFFILIATE, RESPECTIVELY, ARE IN
14 COMPLIANCE WITH THIS SECTION. IF A DISPUTE ARISES BETWEEN AN
15 ELECTRIC UTILITY OR ITS BROADBAND AFFILIATE AND AN UNAFFILIATED
16 COMMERCIAL BROADBAND SUPPLIER:

17 (a) REGARDING MATTERS ADDRESSED IN THIS PART 6, THE PARTIES
18 TO THE DISPUTE HAVE STANDING TO FILE A CLAIM OR CAUSE OF ACTION IN
19 ANY COURT OF COMPETENT JURISDICTION IN THE STATE; AND

20 (b) THE FOLLOWING ARE DISCOVERABLE AND ADMISSIBLE AS
21 EVIDENCE IN COURT REGARDING THE ELECTRIC UTILITY'S AND ITS
22 BROADBAND AFFILIATE'S COMPLIANCE WITH THIS SECTION:

23 (I) ANY CERTIFICATION REQUESTED AND PRODUCED PURSUANT TO
24 THIS SUBSECTION (6):

25 (II) THE TERMS AND CONDITIONS APPLIED TO THE ELECTRIC
26 UTILITY'S OR BROADBAND AFFILIATE'S OFFER TO OR GRANT OF A RIGHT TO
27 THE UNAFFILIATED COMMERCIAL BROADBAND SUPPLIER TO INSTALL,

1 MAINTAIN, OWN, OPERATE, OR USE ATTACHED FACILITIES; AND

2 (III) ANY AUDIT REQUIRED TO BE PERFORMED PURSUANT TO
3 SUBSECTION (5) OF THIS SECTION.

4 (7) NOTWITHSTANDING ANY PROVISION OF THIS PART 6 TO THE
5 CONTRARY, AN ELECTRIC UTILITY THAT IS SUBJECT TO REGULATION UNDER
6 47 U.S.C. SEC. 224, AS AMENDED, AND THE FCC REGULATIONS
7 PROMULGATED PURSUANT TO THAT FEDERAL LAW, IS NOT SUBJECT TO THIS
8 SECTION.

9 (8) NOTHING IN THIS PART 6:

10 (a) SUBJECTS AN ELECTRIC UTILITY TO REGULATION BY THE FCC;

11 (b) CONSTITUTES AN EXERCISE OF, OR AN OBLIGATION OR
12 INTENTION TO EXERCISE, THE RIGHT OF THE STATE UNDER 47 U.S.C. SEC.
13 224 (c) TO REGULATE THE RATES, TERMS, AND CONDITIONS FOR POLE
14 ATTACHMENTS, AS DEFINED IN 47 U.S.C. SEC. 224 (a)(4); OR

15 (c) CONSTITUTES A CERTIFICATION, OR AN OBLIGATION OR
16 INTENTION TO CERTIFY, TO THE FCC UNDER 47 U.S.C. SEC. 224.

17 **SECTION 2.** In Colorado Revised Statutes, **amend** 38-4-103 as
18 follows:

19 **38-4-103. Electric power companies.** (1) Any foreign or
20 domestic corporation organized or chartered for the purpose, among other
21 things, of conducting and maintaining electric power transmission lines
22 for providing power or light by means of electricity for hire shall have
23 HAS a right-of-way for the construction, operation, and maintenance of
24 such electric power transmission lines through any patented or unpatented
25 mine or mining claim or other land without the consent of the owner
26 thereof OF THE PATENTED OR UNPATENTED MINE OR MINING CLAIM OR
27 OTHER LAND, if such THE right-of-way is necessary for the purposes

1 proposed.

2 (2) AN ELECTRIC UTILITY, AS DEFINED IN SECTION 40-15-601 (6),
3 EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION MAY, IN
4 ACCORDANCE WITH PART 6 OF ARTICLE 15 OF TITLE 40:

5 (a) INSTALL OR ALLOW THE INSTALLATION OF ANY ATTACHED
6 FACILITY, AS THAT TERM IS DEFINED IN SECTION 40-15-601 (1); AND

7 (b) EXERCISE ANY RIGHTS AVAILABLE TO THE ELECTRIC UTILITY
8 UNDER PART 6 OF ARTICLE 15 OF TITLE 40 IN CONNECTION WITH THE
9 INSTALLATION.

10 **SECTION 3.** In Colorado Revised Statutes, **amend 38-5-103 as**
11 **follows:**

12 **38-5-103. Power of companies to contract.** (1) Such electric
13 light power, gas, or pipeline company, or such city, ~~or~~ town, OR OTHER
14 LOCAL GOVERNMENT shall have power to contract with any person or
15 corporation, the owner of any lands or any franchise, easement, or interest
16 therein over or under which the line of electric light wire power or
17 pipeline is proposed to be laid or created for the right-of-way for the
18 construction, maintenance, and operation of its electric light wires, pipes,
19 poles, regulator stations, substations, or other property and for the
20 erection, maintenance, occupation, and operation of offices at suitable
21 distances for the public accommodation.

22 (2) AN ELECTRIC UTILITY, AS DEFINED IN SECTION 40-15-601 (6),
23 EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION MAY, IN
24 ACCORDANCE WITH PART 6 OF ARTICLE 15 OF TITLE 40, INSTALL OR ALLOW
25 THE INSTALLATION OF ANY ATTACHED FACILITY FOR COMMERCIAL
26 BROADBAND SERVICE, AS THOSE TERMS ARE DEFINED IN SECTION
27 40-15-601 (1) AND (3), RESPECTIVELY.

1 **SECTION 4. Act subject to petition - effective date.** This act
2 takes effect at 12:01 a.m. on the day following the expiration of the
3 ninety-day period after final adjournment of the general assembly (August
4 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
5 referendum petition is filed pursuant to section 1 (3) of article V of the
6 state constitution against this act or an item, section, or part of this act
7 within such period, then the act, item, section, or part will not take effect
8 unless approved by the people at the general election to be held in
9 November 2020 and, in such case, will take effect on the date of the
10 official declaration of the vote thereon by the governor.