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An Act

SENATE BILL 23-183

BY SENATOR(S) Priola and Baisley, Bridges, Cutter, Fenberg, Hinrichsen, Roberts, Winter F., Fields, Jaquez Lewis, Marchman, Moreno, Sullivan; also REPRESENTATIVE(S) Titone and Weinberg, Parenti, Story, Bird, Boesenecker, Brown, Froelich, Hamrick, Jodeh, Joseph, Kipp, Marshall, McCormick, Snyder, Valdez, Weissman, McCluskie.

CONCERNING THE ELIMINATION OF THE REQUIREMENT THAT A LOCAL GOVERNMENT OBTAIN VOTER APPROVAL TO PROVIDE CERTAIN COMMUNICATIONS SERVICES.

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

SECTION 1. In Colorado Revised Statutes, **amend** 29-27-101 as follows:

29-27-101. Legislative declaration. (1) The general assembly hereby finds and declares that it is the policy of ~~this~~ THE state to ensure that cable television service, telecommunications service, ~~and high speed internet access, otherwise known as advanced~~ BROADBAND INTERNET service, AND MIDDLE MILE INFRASTRUCTURE, are each provided within a consistent, comprehensive, and nondiscriminatory federal, state, and local government framework.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(2) The general assembly further finds and declares that:

(a) There is a need for statewide uniformity in the regulation of all public and private entities that provide cable television service, telecommunications service, ~~and advanced~~ BROADBAND INTERNET service, AND MIDDLE MILE INFRASTRUCTURE.

(b) Municipal ordinances, rules, and other regulations governing the provision of cable television service, telecommunications service, ~~and advanced~~ BROADBAND INTERNET service, AND MIDDLE MILE INFRASTRUCTURE by a local government impact persons living outside the municipality.

(c) Regulating the provision of cable television service, telecommunications service, ~~and advanced~~ BROADBAND INTERNET service, AND MIDDLE MILE INFRASTRUCTURE by a local government is a matter of statewide concern.

SECTION 2. In Colorado Revised Statutes, 29-27-102, **amend** (4); **repeal** (1) and (5); and **add** (1.5) and (3.5) as follows:

29-27-102. Definitions. As used in this article, unless the context otherwise requires:

~~(1) "Advanced service" means high-speed internet access capability in excess of two hundred fifty-six kilobits per second both upstream and downstream.~~

(1.5) "BROADBAND INTERNET SERVICE" HAS THE SAME MEANING AS SET FORTH IN SECTION 40-15-102 (3.5).

(3.5) "MIDDLE MILE INFRASTRUCTURE" HAS THE SAME MEANING AS SET FORTH IN 47 U.S.C. SEC. 1741 (a)(9).

(4) "Private provider" means a private entity that provides cable television service, telecommunications service, ~~or advanced~~ BROADBAND INTERNET service, OR MIDDLE MILE INFRASTRUCTURE.

~~(5) "Subscriber" means a person that lawfully receives cable~~

~~television service, telecommunications service, or advanced service. A person that utilizes cable television service, telecommunications service, or advanced service provided by a local government for local governmental or intergovernmental purposes and is used by persons accessing government services is not a subscriber for purposes of this article.~~

SECTION 3. In Colorado Revised Statutes, 29-27-103, **amend** (2) introductory portion, (2)(c), and (2)(d); and **repeal** (1) and (3) as follows:

29-27-103. Provision of cable television, telecommunications, and broadband internet services or middle mile infrastructure.

(1) ~~Except as provided in this article, a local government shall not:~~

~~(a) Provide to one or more subscribers cable television service, telecommunications service, or advanced service; or~~

~~(b) Purchase, lease, construct, maintain, or operate any facility for the purpose of providing cable television service, telecommunications service, or advanced service to one or more subscribers.~~

(2) A LOCAL GOVERNMENT MAY PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, BROADBAND INTERNET SERVICE, OR MIDDLE MILE INFRASTRUCTURE, SUBJECT TO THE REQUIREMENTS OF THIS ARTICLE 27. For purposes of this ~~article~~ ARTICLE 27, a local government provides cable television service, telecommunications service, ~~or advanced~~ BROADBAND INTERNET service, OR MIDDLE MILE INFRASTRUCTURE if the local government provides the cable television service, telecommunications service, ~~or advanced~~ BROADBAND INTERNET service, ~~to one or more subscribers~~ OR MIDDLE MILE INFRASTRUCTURE:

(c) By contract, including a contract whereby the local government leases, sells capacity in, or grants other similar rights to a private provider to use local governmental facilities designed or constructed to provide cable television service, telecommunications service, ~~or advanced~~ BROADBAND INTERNET service, OR MIDDLE MILE INFRASTRUCTURE for internal local government purposes in connection with a private provider's offering of cable television service, telecommunications service, ~~or advanced~~ BROADBAND INTERNET service, OR MIDDLE MILE INFRASTRUCTURE; or

(d) Through THE sale or purchase of resale or wholesale cable

television service, telecommunications service, ~~or advanced BROADBAND INTERNET service, OR MIDDLE MILE INFRASTRUCTURE~~ for the purpose of providing cable television service, telecommunications service, ~~or advanced BROADBAND INTERNET service, to one or more subscribers OR MIDDLE MILE INFRASTRUCTURE.~~

~~(3) Nothing in this article shall be construed to limit the authority of a local government to lease to a private provider physical space in or on its property for the placement of equipment or facilities the private provider uses to provide cable television, telecommunications, or advanced services.~~

SECTION 4. In Colorado Revised Statutes, **repeal** 29-27-201 as follows:

29-27-201. Vote - referendum. ~~(1) Before a local government may engage or offer to engage in providing cable television service, telecommunications service, or advanced service, an election shall be called on whether or not the local government shall provide the proposed cable television service, telecommunications service, or advanced service.~~

~~(2) The ballot at an election conducted pursuant to this section shall pose the question as a single subject and shall include a description of the nature of the proposed service, the role that the local government will have in provision of the service, and the intended subscribers of such service. The ballot proposition shall not take effect until submitted to the electors and approved by the majority of those voting on the ballot.~~

SECTION 5. In Colorado Revised Statutes, **repeal** 29-27-202 as follows:

29-27-202. Exemption for unserved areas. ~~(1) A local government shall be exempt from the requirements of this part 2 and may engage or offer to engage in providing cable television service, telecommunications service, or advanced service if:~~

~~(a) No private provider of cable television service, telecommunications service, or advanced service provides the service anywhere within the boundaries of the local government;~~

~~(b) The governing body of the local government has submitted a~~

~~written request to provide the service to any incumbent provider of cable television service, telecommunications service, or advanced service within the boundaries of the local government; and~~

~~(c) The incumbent provider has not agreed within sixty days of the receipt of a request submitted pursuant to paragraph (b) of this subsection (1) to provide the service or, if the provider has agreed, it has not commenced providing the service within fourteen months of the receipt of the request.~~

SECTION 6. In Colorado Revised Statutes, 29-27-301, **amend** (1) and (2)(a) as follows:

29-27-301. General operating limitations. (1) A local government that provides cable television service, telecommunications service, ~~or advanced~~ BROADBAND INTERNET service, ~~under~~ OR MIDDLE MILE INFRASTRUCTURE PURSUANT TO this ~~article~~ ARTICLE 27 shall comply with all state and federal laws, rules, and regulations governing provision of such service by a private provider; except that nothing herein ~~shall be construed to affect~~ AFFECTS the jurisdiction of the public utilities commission with respect to municipal utilities.

(2) (a) A local government shall not make or grant any undue or unreasonable preference or advantage to itself or to any private provider of cable television services, telecommunications services, ~~or advanced services~~ BROADBAND INTERNET SERVICE, OR MIDDLE MILE INFRASTRUCTURE.

SECTION 7. In Colorado Revised Statutes, **repeal** 29-27-302 as follows:

29-27-302. Scope of article. ~~(1) Nothing in this article shall be construed to authorize any local government to:~~

~~(a) Provide, directly or indirectly, cable television service, telecommunications service, or advanced service; or~~

~~(b) Purchase, lease, construct, maintain, or operate a facility for the purpose of providing, directly or indirectly, cable television service, telecommunications service, or advanced service.~~

~~(2) Nothing in this article shall be construed to apply to a local government purchasing, leasing, constructing, maintaining, or operating facilities that are designed to provide cable television service, telecommunications service, or advanced service that the local government uses for internal or intergovernmental purposes.~~

~~(3) Nothing in this article shall be construed to apply to the sale or lease by a local government to private providers of excess capacity, if:~~

~~(a) Such excess capacity is insubstantial in relation to the capacity utilized by the local government for its own purposes; and~~

~~(b) The opportunity to purchase and the opportunity to use such excess capacity is made available to any private provider in a nondiscriminatory, nonexclusive, and competitively neutral manner.~~

~~(4) Nothing in this article shall be construed to limit either the authority of the statewide internet portal authority created in section 24-37.7-102, C.R.S., to carry out its mission or to integrate the electronic information delivery systems of local governments into the statewide internet portal as defined in article 37.7 of title 24, C.R.S.~~

~~(5) Nothing in part 1 or part 2 of this article 27 shall be construed to apply to a school district or board of cooperative services, created pursuant to article 5 of title 22, purchasing, leasing, constructing, maintaining, or operating facilities that exclusively provide advanced service that enables students, teachers, and staff members of the district, the board of cooperative services, or the member districts of the board of cooperative services, to access a school-owned and operated network to facilitate remote learning.~~

SECTION 8. In Colorado Revised Statutes, **repeal** 29-27-304 as follows:

29-27-304. Applicability. This article shall apply to cable television service, telecommunications service, and advanced service and to the purchase, lease, construction, maintenance, or operation of any facility for the purpose of providing such service, for which a local government has not entered into an agreement or otherwise taken any substantial action prior to March 1, 2005, to provide such service or purchase, lease, construct,

~~maintain, or operate such facilities.~~

SECTION 9. In Colorado Revised Statutes, 40-15-102, **amend** (3.5) as follows:

40-15-102. Definitions. As used in this article 15, unless the context otherwise requires:

(3.5) "Broadband internet service" means a retail service that transmits and receives data from the customer's property or determined point of presence to substantially all internet endpoints. The term includes any capabilities that are incidental to and enable the operation of the broadband INTERNET service.

SECTION 10. In Colorado Revised Statutes, 30-20-603, **amend** (1)(a) and (1)(g)(II); **repeal** (1)(g)(III)(A); and **add** (1)(g)(III)(A.5) as follows:

30-20-603. Improvements and funding authorized - how instituted - conditions - definitions. (1) (a) A district may be formed in accordance with the requirements of this part 6 for the purpose of constructing, installing, acquiring, or funding, in whole or in part, any public improvement, so long as the county that forms the district is authorized to provide such improvement or provide for such funding under the county's home rule charter, if any, or the laws of this state. Public improvements or the funding thereof shall not include any facility identified in section 30-20-101 (8) or (9). No such district shall provide the same improvement as an existing special district within the territory of such existing special district unless the existing special district consents. The improvements authorized by this part 6 may consist, without limitation, of constructing, grading, paving, pouring, curbing, guttering, lining, or otherwise improving the whole or any part of any street or providing street lighting, drainage facilities, or service improvements, in the unincorporated area of a county or wholly or partly within the boundaries of any municipality within the county if such municipality consents by ordinance to such improvements. If improvements within a municipality are so included in a county improvement district by municipal consent, the county shall have full authority to construct or acquire such improvements, to assess property within such municipality benefited by such improvements, and to enforce and collect such assessments, in the manner provided in this

part 6. The improvements authorized by this part 6 may include, without limitation, the construction of sidewalks adjacent to any such streets or maintenance roads adjacent to any such drainage facilities. Prior to the establishment of any improvement district for the purpose of providing street lighting, arrangements, by contract or otherwise, must be established under which the owners of property included within such district shall be responsible for the maintenance and operation of such street lighting improvement. The costs of maintenance and operation of such street lighting improvements shall not be paid from the county general fund. Drainage facilities shall not be provided in any area which is within an existing drainage district organized or created pursuant to law without the approval of such district. The term "service" as used in this ~~paragraph (a)~~ SUBSECTION (1)(a) includes the services provided by a public utility as defined in section 40-1-103, ~~C.R.S.~~, as well as ~~advanced~~ BROADBAND INTERNET service as defined in ~~section 29-27-102 (1), C.R.S.~~ SECTION 40-15-102 (3.5), cable television service as defined in section 29-27-102 (2), ~~C.R.S.~~, telecommunications service as defined in section 40-15-102 (29), ~~C.R.S.~~, geothermal heat suppliers as defined in section 40-40-103, ~~C.R.S.~~, and information service as defined in 47 U.S.C. sec. 153 (20), or any successor section.

(g) (II) In compliance with the procedures set forth in subsection (1)(g)(I) of this section, a rural county may establish a local improvement district only in an unserved area to contract with a telecommunications service provider or ~~an advanced~~ A BROADBAND INTERNET service provider to fund the construction of ~~an advanced~~ BROADBAND INTERNET service improvement.

(III) For purposes of this subsection (1)(g):

(A) ~~"Advanced service" has the same meaning as "broadband service" as it is defined in section 40-15-102 (3.3).~~

(A.5) "BROADBAND INTERNET SERVICE" HAS THE SAME MEANING AS SET FORTH IN SECTION 40-15-102 (3.5).

SECTION 11. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Steve Fenberg
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO