

1 (4) (a) "COMMERCIAL BROADBAND SUPPLIER" MEANS:
2 (I) A PROVIDER OF BROADBAND INTERNET SERVICE OR AN
3 EXISTING BROADBAND PROVIDER, AS THAT TERM IS DEFINED IN SECTION
4 38-5.5-102 (3), OR A PERSON THAT INTENDS TO PROVIDE BROADBAND
5 INTERNET SERVICE OR BROADBAND SERVICE; OR
6 (II) A PERSON THAT DIRECTLY OR INDIRECTLY SELLS, LEASES, OR
7 OTHERWISE TRANSFERS ATTACHED FACILITIES OR A RIGHT TO INSTALL,
8 OPERATE, MAINTAIN, OR USE ATTACHED FACILITIES FOR ANOTHER
9 PERSON'S PROVISION OF COMMERCIAL BROADBAND SERVICE OR A PERSON
10 THAT INTENDS TO SELL, LEASE, OR OTHERWISE TRANSFER ATTACHED
11 FACILITIES OR A RIGHT TO INSTALL, OPERATE, MAINTAIN, OR USE
12 ATTACHED FACILITIES.
13 (b) "COMMERCIAL BROADBAND SUPPLIER" DOES NOT MEAN AN
14 ELECTRIC UTILITY.
15 (5) "ELECTRIC EASEMENT" MEANS A RECORDED OR UNRECORDED
16 EASEMENT, RIGHT-OF-WAY UNDER SECTION 38-4-103 OR OTHERWISE, OR
17 SIMILAR RIGHT IN OR TO REAL PROPERTY, NO MATTER HOW ACQUIRED,
18 HELD BY AN ELECTRIC UTILITY FOR THE SITING OF ELECTRIC SERVICE
19 INFRASTRUCTURE OR FOR THE PURPOSE OF DELIVERING ELECTRIC SERVICE,
20 REGARDLESS OF WHETHER:
21 (a) THE EASEMENT OR OTHER RIGHT IS EXCLUSIVELY FOR THE
22 PROVISION OF ELECTRIC SERVICE OR FOR USE IN CONNECTION WITH
23 COMMERCIAL BROADBAND SERVICE, TELECOMMUNICATION SERVICE, OR
24 ANOTHER PURPOSE; OR
25 (b) THE ELECTRIC UTILITY OR A COMMERCIAL BROADBAND
26 SUPPLIER USES THE EASEMENT OR OTHER RIGHT TO PROVIDE COMMERCIAL
27 BROADBAND SERVICE.
28 (6) "ELECTRIC UTILITY" MEANS A COOPERATIVE ELECTRIC
29 ASSOCIATION, AS DEFINED IN SECTION 40-9.5-102.
30 (7) "INTEREST HOLDER" MEANS A PROPERTY OWNER OR OTHER
31 PERSON WITH AN INTEREST IN THE REAL PROPERTY UPON WHICH AN
32 ELECTRIC EASEMENT IS LOCATED.
33 (8) "MEMORANDUM" MEANS A WRITTEN INSTRUMENT THAT
34 INCLUDES, AT A MINIMUM, THE NAME AND ADDRESS OF THE ELECTRIC
35 UTILITY, THE DATE ON WHICH THE NOTICE WAS MAILED, AND THE
36 INFORMATION REQUIRED TO BE INCLUDED IN A NOTICE UNDER SECTION
37 40-15-602 (2)(b)(III) AND (2)(b)(IV).
38 (9) "NOTICE" MEANS A WRITTEN LETTER SUBSTANTIALLY
39 COMPLYING WITH THE REQUIREMENTS SET FORTH IN SECTION 40-15-602
40 (2)(b), WHICH NOTICE SHALL BE DEEMED DELIVERED ON THE DATE
41 POSTMARKED OR OTHERWISE TIME STAMPED.

1 (10) "PERSON" HAS THE MEANING SET FORTH IN SECTION 40-1-102
2 (10).

3 (11) "PROPERTY OWNER" MEANS A PERSON WITH A RECORDED FEE
4 SIMPLE INTEREST IN REAL PROPERTY UPON WHICH AN ELECTRIC EASEMENT
5 IS LOCATED.

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, WITHOUT THE
13 CONSENT OF AN INTEREST HOLDER IN THE REAL PROPERTY SUBJECT TO THE
14 ELECTRIC EASEMENT, TAKE THE FOLLOWING ACTIONS TO THE EXTENT NOT
15 ALREADY PERMITTED BY THE ELECTRIC EASEMENT:

16 (a) INSTALL, MAINTAIN, OR OWN, OR PERMIT ANY COMMERCIAL
17 BROADBAND SUPPLIER, INCLUDING A BROADBAND AFFILIATE, TO INSTALL,
18 MAINTAIN, OR OWN AN ATTACHED FACILITY FOR EXTERNAL USE AND
19 OPERATION BY A COMMERCIAL BROADBAND SUPPLIER, INCLUDING A
20 BROADBAND AFFILIATE, IN PROVIDING COMMERCIAL BROADBAND SERVICE;
21 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
28 SECTION WITH RESPECT TO AN ELECTRIC EASEMENT OR PORTION OF AN
29 ELECTRIC EASEMENT, AN ELECTRIC UTILITY OR ITS DESIGNATED
30 COMMERCIAL BROADBAND SUPPLIER MUST SEND NOTICE TO EACH
31 PROPERTY OWNER THAT HOLDS AN INTEREST IN THE REAL PROPERTY
32 SUBJECT TO THE ELECTRIC EASEMENT AND MUST FILE A MEMORANDUM IN
33 THE OFFICE OF THE COUNTY CLERK AND RECORDER IN EACH COUNTY IN
34 WHICH THE ELECTRIC UTILITY IS EXERCISING ITS RIGHTS UNDER
35 SUBSECTION (1) OF THIS SECTION. IF, WITHIN ONE YEAR AFTER DELIVERY
36 OF NOTICE PURSUANT TO THIS SUBSECTION (2), AN ELECTRIC UTILITY HAS
37 NOT COMMENCED ENGAGING IN ANY OF THE ACTIONS SET FORTH IN
38 SUBSECTION (1) OF THIS SECTION, INCLUDING THE COMMENCEMENT OF
39 CONSTRUCTING A NEW INSTALLATION, THE ELECTRIC UTILITY OR
40 DESIGNATED COMMERCIAL BROADBAND SUPPLIER MUST REDELIVER
41 NOTICE PURSUANT TO THIS SUBSECTION (2) BEFORE EXERCISING ITS RIGHTS

1 UNDER SUBSECTION (1) OF THIS SECTION. IF AN ELECTRIC UTILITY OR ITS
2 DESIGNATED COMMERCIAL BROADBAND SUPPLIER FAILS TO DELIVER
3 SUFFICIENT NOTICE IN ACCORDANCE WITH THIS SUBSECTION (2), IT MAY
4 ONLY COMMENCE EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS
5 SECTION UPON SUBSEQUENT DELIVERY OF SUFFICIENT NOTICE, AT WHICH
6 TIME THE ONE-YEAR PERIOD WILL COMMENCE.

7 (b) A LETTER PROVIDING NOTICE PURSUANT TO THIS SUBSECTION
8 (2) MUST:

9 (I) BE SENT BY FIRST-CLASS MAIL FROM OR ON BEHALF OF THE
10 ELECTRIC UTILITY TO THE INTEREST HOLDER AT THE LAST KNOWN
11 ADDRESS BASED ON THE ELECTRIC UTILITY'S RECORDS OR THE ADDRESS
12 LISTED FOR THE PROPERTY IN THE RECORDS OF THE OFFICE OF THE COUNTY
13 CLERK AND RECORDER;

14 (II) INCLUDE THE NAME, ADDRESS, TELEPHONE NUMBER, AND
15 NAMED POINT OF CONTACT FOR THE ELECTRIC UTILITY AND, IF DELIVERED
16 BY A COMMERCIAL BROADBAND SUPPLIER DESIGNATED BY THE ELECTRIC
17 UTILITY, THE NAME, ADDRESS, TELEPHONE NUMBER, AND NAMED POINT OF
18 CONTACT FOR THE DESIGNATED COMMERCIAL BROADBAND SUPPLIER;

19 (III) INCLUDE THE PROPERTY ADDRESS AND APPROXIMATE
20 LOCATION OF THE ELECTRIC EASEMENT, WHICH NEED NOT INCLUDE A
21 LEGAL DESCRIPTION, LAND TITLE SURVEY, PLAT, OR OTHER DESIGNATION
22 OF THE EXACT BOUNDARIES OF THE ELECTRIC EASEMENT;

23 (IV) INCLUDE:

24 (A) A CITATION TO THIS PART 6; AND

25 (B) A COPY OF THE LANGUAGE OF SUBSECTION (1) OF THIS SECTION
26 WITH AN INDICATION OF WHETHER THE ELECTRIC UTILITY IS EXERCISING
27 RIGHTS UNDER ONE OR MORE OF SUBSECTION (1)(a) OR (1)(b) OF THIS
28 SECTION;

29 (V) GIVE AN ESTIMATED TIME FOR THE START OF INSTALLATION OR
30 CONSTRUCTION WITH REGARD TO ANY NEW INSTALLATION OR
31 CONSTRUCTION THAT WILL OCCUR IN CONNECTION WITH THE EXERCISE OF
32 RIGHTS UNDER SUBSECTION (1) OF THIS SECTION;

33 (VI) INCLUDE A STATEMENT REGARDING THE RIGHT AND
34 OBLIGATION OF THE ELECTRIC UTILITY, OR ITS DESIGNATED COMMERCIAL
35 BROADBAND SUPPLIER, TO RECORD A MEMORANDUM; AND

36 (VII) INCLUDE A STATEMENT REGARDING THE STATUTE OF
37 LIMITATIONS FOR THE INTEREST HOLDER TO FILE A CLAIM WITH RESPECT
38 TO THE ELECTRIC UTILITY'S EXERCISE OF RIGHTS.

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

1 (4) AN ELECTRIC UTILITY SHALL NOT DIRECTLY PROVIDE RETAIL
2 COMMERCIAL BROADBAND SERVICE BUT MAY CAUSE OR ALLOW A
3 BROADBAND AFFILIATE TO OFFER RETAIL COMMERCIAL BROADBAND
4 SERVICE. AS LONG AS AN ELECTRIC UTILITY MAINTAINS ITS EXCLUSIVE
5 RIGHT TO PROVIDE ELECTRIC SERVICE TO CUSTOMERS WITHIN ITS
6 EXCLUSIVE SERVICE TERRITORY, BOTH THE ELECTRIC UTILITY THAT HAS
7 A BROADBAND AFFILIATE AND THE BROADBAND AFFILIATE SHALL:

8 (a) MAINTAIN OR CAUSE TO BE MAINTAINED AN ACCOUNTING
9 SYSTEM FOR THE BROADBAND AFFILIATE SEPARATE FROM THE ELECTRIC
10 UTILITY'S ACCOUNTING SYSTEM, USING GENERALLY ACCEPTED
11 ACCOUNTING PRINCIPLES OR ANOTHER REASONABLE AND CUSTOMARY
12 ALLOCATION METHOD;

13 (b) CAUSE A FINANCIAL AUDIT TO BE PERFORMED BY AN
14 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, WITHIN TWO YEARS AFTER
15 COMMENCEMENT OF COMMERCIAL OPERATION OF RETAIL COMMERCIAL
16 BROADBAND SERVICE AND AT LEAST ONCE EVERY TWO YEARS
17 THEREAFTER, WITH RESPECT TO THE BROADBAND AFFILIATE'S PROVISION
18 OF COMMERCIAL BROADBAND SERVICE, INCLUDING AN AUDIT OF THE
19 ALLOCATION OF COSTS FOR PROPERTY AND SERVICES THAT ARE USED IN
20 BOTH THE PROVISION OF COMMERCIAL BROADBAND SERVICE AND THE
21 ELECTRIC UTILITY'S PROVISION OF ELECTRIC SERVICE; AND

22 (c) (I) NOT CAUSE OR ALLOW THE ELECTRIC UTILITY TO USE ITS
23 EXCLUSIVE RIGHT TO PROVIDE ELECTRIC SERVICES WITHIN ITS EXCLUSIVE
24 TERRITORY TO DIRECTLY OR INDIRECTLY CROSS-SUBSIDIZE THE
25 BROADBAND AFFILIATE OR ITS PROVISION OF COMMERCIAL BROADBAND
26 SERVICE, WHETHER BY DISCRIMINATORY OR BELOW FAIR MARKET VALUE
27 PRICING; PAYMENT OF CAPITAL OR OPERATING COSTS PROPERLY CHARGED
28 TO THE BROADBAND AFFILIATE UNDER APPLICABLE ACCOUNTING RULES;
29 USE OF ANY REVENUE FROM OR SUBSIDY FOR THE PROVISION OF ELECTRIC
30 SERVICE TO SUPPORT COMMERCIAL BROADBAND SERVICE, EXCEPT IN
31 CONNECTION WITH THE ELECTRIC UTILITY'S PROVISION OF ELECTRICITY; OR
32 OTHERWISE.

33 (II) NOTHING IN THIS SUBSECTION (4)(c) PROHIBITS AN ELECTRIC
34 UTILITY FROM:

35 (A) ENTERING INTO A TRANSACTION WITH A BROADBAND
36 AFFILIATE ON TERMS AND CONDITIONS SUBSTANTIALLY SIMILAR TO THOSE
37 THAT WOULD BE AGREED TO BETWEEN TWO SIMILARLY SITUATED PARTIES
38 IN AN ARM'S LENGTH COMMERCIAL TRANSACTION; OR

39 (B) PROVIDING REDUCED-COST COMMERCIAL BROADBAND SERVICE
40 TO LOW-INCOME RETAIL CUSTOMERS.

41 (5) THE TERMS AND CONDITIONS OF A WRITTEN ELECTRIC

1 EASEMENT APPLY TO AN ELECTRIC UTILITY'S USES OF THE ELECTRIC
2 EASEMENT SET FORTH IN SUBSECTION (1) OF THIS SECTION, EXCEPT TO THE
3 EXTENT THAT THOSE TERMS AND CONDITIONS PROHIBIT OR HAVE THE
4 EFFECT OF PROHIBITING OR MATERIALLY IMPAIRING THE ELECTRIC
5 UTILITY'S EXERCISE OF RIGHTS UNDER SUBSECTION (1) OF THIS SECTION.
6 A PROHIBITION ON ABOVEGROUND ELECTRIC SERVICE INFRASTRUCTURE
7 CONTAINED WITHIN A WRITTEN ELECTRIC EASEMENT CONSTITUTES A
8 PROHIBITION ON ABOVEGROUND ATTACHED FACILITIES.

9 (6) NOTHING IN THIS PART 6 REQUIRES AN ELECTRIC UTILITY TO
10 COMPLY WITH SUBSECTION (2) OF THIS SECTION IN ORDER TO TAKE ANY
11 ACTION OR EXERCISE ANY RIGHT UNDER AN ELECTRIC EASEMENT THAT IS
12 ALREADY PERMITTED BY THE TERMS OF THE ELECTRIC EASEMENT.

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

- 23 (I) THE EFFECTIVE DATE OF THIS SECTION;
- 24 (II) THE DATE OF DELIVERY OF NOTICE PURSUANT TO SECTION
25 40-15-602 (2); OR
- 26 (III) THE DATE OF RECORDING OF A MEMORANDUM PURSUANT TO
27 SECTION 40-15-602 (2).

28 (b) SUBSECTION (1)(a) OF THIS SECTION DOES NOT APPLY TO A
29 CLAIM OR CAUSE OF ACTION BASED SOLELY ON DAMAGE TO PROPERTY OR
30 BREACH OF THE TERMS AND CONDITIONS OF A WRITTEN ELECTRIC
31 EASEMENT AS THE TERMS AND CONDITIONS APPLY IN ACCORDANCE WITH
32 SECTION 40-15-602 (5).

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

36 (2) A CLAIM OR CAUSE OF ACTION SHALL NOT BE BROUGHT BY OR
37 ON BEHALF OF AN INTEREST HOLDER AGAINST A COMMERCIAL BROADBAND
38 SUPPLIER FOR ACTIONS THAT THE COMMERCIAL BROADBAND SUPPLIER HAS
39 TAKEN UNDER SECTION 40-15-602 (2) AN ELECTRIC UTILITY.

40 (3) IF AN INTEREST HOLDER BRINGS A TRESPASS CLAIM, INVERSE
41 CONDEMNATION CLAIM, OR ANY OTHER CLAIM OR CAUSE OF ACTION FOR

1 ANELECTRIC UTILITY'S OR COMMERCIAL BROADBAND SUPPLIER'S EXERCISE
2 OF RIGHTS OR PERFORMANCE OF ACTIONS DESCRIBED IN SUBSECTION (1)
3 OF THIS SECTION, THE FOLLOWING APPLIES TO THE CLAIM OR CAUSE OF
4 ACTION:

5 (a) THE MEASURE OF DAMAGES FOR ALL SUCH CLAIMS, TAKEN
6 TOGETHER, IS THE FAIR MARKET VALUE OF THE REDUCTION IN VALUE OF
7 THE INTEREST HOLDER'S INTEREST IN THE REAL PROPERTY, AS
8 CONTEMPLATED BY SECTION 38-1-121 (1). IN DETERMINING OR PROVIDING
9 THE FAIR MARKET VALUE UNDER THIS SUBSECTION (3)(a):

10 (I) THE FOLLOWING SHALL NOT BE USED AND ARE NOT ADMISSIBLE
11 AS EVIDENCE IN ANY PROCEEDING:

12 (A) PROFITS, FEES, OR REVENUE DERIVED FROM THE ATTACHED
13 FACILITIES; OR

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

17 (II) CONSIDERATION MUST BE GIVEN TO ANY INCREASE IN VALUE
18 TO THE REAL PROPERTY INTEREST RESULTING FROM THE AVAILABILITY OF
19 COMMERCIAL BROADBAND SERVICE TO THE REAL PROPERTY UNDERLYING
20 THE REAL PROPERTY INTEREST THAT ARISES FROM THE INSTALLATION OF
21 ATTACHED FACILITIES.

22 (b) THE INTEREST HOLDER MUST MAKE REASONABLE
23 ACCOMMODATIONS FOR THE ELECTRIC UTILITY OR COMMERCIAL
24 BROADBAND SUPPLIER TO PERFORM AN APPRAISAL OR INSPECTION OF THE
25 REAL PROPERTY WITHIN NINETY DAYS FOLLOWING ANY WRITTEN REQUEST
26 FOR AN APPRAISAL OR INSPECTION. IF AN INTEREST HOLDER FAILS TO MAKE
27 SUCH ACCOMMODATIONS, THE ELECTRIC UTILITY OR COMMERCIAL
28 BROADBAND SUPPLIER HAS NO FURTHER LIABILITY TO THE INTEREST
29 HOLDER.

30 (c) ANY DAMAGES FOR THE EXERCISE OF RIGHTS OR ACTIONS SET
31 FORTH IN SUBSECTION (1) OF THIS SECTION:

32 (I) EXCEPT AS PROVIDED IN SUBSECTION (3)(c)(III) OF THIS
33 SECTION, ARE LIMITED TO THOSE DAMAGES THAT EXISTED AT THE TIME
34 THAT THE ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER FIRST
35 EXERCISED THE RIGHTS OR PERFORMED THE ACTIONS;

36 (II) SHALL NOT BE DEEMED TO CONTINUE, ACCRUE, OR
37 ACCUMULATE; AND

38 (III) MAY INCLUDE ADDITIONAL DAMAGES FOR ANY PHYSICAL
39 DAMAGE TO PROPERTY OR BREACH OF THE TERMS AND CONDITIONS OF A
40 WRITTEN ELECTRIC EASEMENT AS THE TERMS AND CONDITIONS APPLY
41 AFTER GIVING EFFECT TO SECTION 40-15-602 (5).

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

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

16 (4) BY ACCEPTING A DAMAGE AWARD UNDER THIS SECTION OTHER
17 THAN A DAMAGE AWARD UNDER SUBSECTION (3)(c)(III) OF THIS SECTION,
18 AN INTEREST HOLDER SHALL BE DEEMED TO HAVE GRANTED AN
19 EASEMENT, EQUAL IN DURATION TO THE TERM OF THE ELECTRIC EASEMENT
20 AND SUBJECT TO SECTION 40-15-602 (5), TO THE EXTENT OF THE INTEREST
21 HOLDER'S RIGHTS IN THE REAL PROPERTY, FOR ALL OF THE USES OF THE
22 REAL PROPERTY AND ACTIONS SET FORTH IN SECTION 40-15-602 (1).

23 **40-15-604. Electric utility obligations.** (1) AN ELECTRIC UTILITY
24 THAT EXERCISES ANY RIGHTS UNDER SECTION 40-15-602 (1)(a) OR (1)(b)
25 FOR THE PROVISION OF COMMERCIAL BROADBAND SERVICE OR THAT HAS
26 A BROADBAND AFFILIATE SHALL NOT DISCRIMINATE AMONG COMMERCIAL
27 BROADBAND SUPPLIERS, INCLUDING BROADBAND AFFILIATES, IN OFFERING
28 OR GRANTING RIGHTS TO INSTALL OR ATTACH ANY ATTACHED FACILITIES
29 OR IN LEASING OR USING CAPACITY OF ANY ATTACHED FACILITIES.

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

32 (a) CHARGE RECURRING FEES NOT EXCEEDING ANY FEES IN
33 ACCORDANCE WITH RATES THAT APPLY TO ATTACHMENTS TO POLES
34 UNDER SECTION 224 (e) OF THE FEDERAL "COMMUNICATIONS ACT OF
35 1934", AS AMENDED, AND THE FCC'S REGULATIONS AND POLICIES
36 IMPLEMENTING THE FEDERAL ACT CONCERNING POLE ATTACHMENT RATES
37 THAT APPLY TO INVESTOR-OWNED UTILITIES, AS SET FORTH IN 47 CFR
38 1.1406, TO ALL COMMERCIAL BROADBAND SUPPLIERS FOR ATTACHMENTS
39 ON A POLE OR ELECTRIC SERVICE INFRASTRUCTURE THAT IS OWNED OR
40 CONTROLLED BY THE ELECTRIC UTILITY OR BROADBAND AFFILIATE;
41 EXCEPT THAT, IF AN ELECTRIC UTILITY DEMONSTRATES WITH COMPETENT

1 EVIDENCE THAT IT CANNOT RECOVER ALL OF ITS INCREMENTAL CAPITAL
2 AND OPERATING COSTS OF PROVIDING THE POLE ATTACHMENT THROUGH
3 THE RATES AND ANY APPLICABLE ONE-TIME CHARGES, THE ELECTRIC
4 UTILITY MAY CHARGE A HIGHER RATE TO COMMERCIAL BROADBAND
5 SUPPLIERS ON A NONDISCRIMINATORY BASIS TO THE EXTENT REQUIRED TO
6 RECOVER THE INCREMENTAL COSTS;

7 (b) PROVIDE ALL COMMERCIAL BROADBAND SUPPLIERS ACCESS TO
8 ALL POLES OR ELECTRIC SERVICE INFRASTRUCTURE OWNED BY THE
9 ELECTRIC UTILITY OR BROADBAND AFFILIATE FOR THE PURPOSE OF
10 ATTACHING EQUIPMENT FOR THE PROVISION OF COMMERCIAL BROADBAND
11 SERVICE. ACCESS PROVIDED IN ACCORDANCE WITH THIS SUBSECTION
12 (2)(b) MUST BE PROVIDED:

13 (I) ON A JUST, REASONABLE, AND NONDISCRIMINATORY BASIS AND
14 IN A MANNER CONSISTENT WITH THE REGULATORY OBLIGATIONS SET
15 FORTH IN FCC REGULATIONS REGARDING INVESTOR-OWNED UTILITY POLE
16 OWNERS; AND

17 (II) UNDER TERMS AND CONDITIONS THAT ARE NO LESS
18 FAVORABLE THAN THE TERMS AND CONDITIONS OFFERED TO BROADBAND
19 AFFILIATES, INCLUDING TERMS AND CONDITIONS REGARDING APPLICATION
20 REQUIREMENTS, TECHNICAL REQUIREMENTS, ELECTRIC LINEWORKER
21 HEALTH AND SAFETY REQUIREMENTS, ADMINISTRATIVE FEES, TIMELINES,
22 AND MAKE-READY REQUIREMENTS; AND

23 (c) CHARGE FEES TO COMMERCIAL BROADBAND SUPPLIERS FOR
24 LEASE OR USE OF ATTACHED FACILITIES OWNED OR CONTROLLED BY THE
25 ELECTRIC UTILITY UNDER JUST, REASONABLE, AND NONDISCRIMINATORY
26 TERMS AND CONDITIONS, INCLUDING FEES THAT ARE EQUAL TO OR LESS
27 THAN THE FEES THAT THE ELECTRIC UTILITY CHARGES TO ITS BROADBAND
28 AFFILIATES.

29 (3) SUBJECT TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS
30 SECTION, NOTHING IN THIS SECTION REQUIRES AN ELECTRIC UTILITY TO
31 OFFER OR GRANT A RIGHT TO ACCESS OR USE AN ELECTRIC EASEMENT OR
32 TO USE ATTACHED FACILITIES OR ELECTRIC SERVICE INFRASTRUCTURE
33 OWNED OR CONTROLLED BY THE ELECTRIC UTILITY IN A MANNER THAT
34 WOULD MATERIALLY INTERFERE WITH THE ELECTRIC UTILITY'S
35 CONSTRUCTION, MAINTENANCE, OR USE OF ANY ELECTRIC UTILITY
36 INFRASTRUCTURE FOR THE PROVISION OF ELECTRIC SERVICE.

37 (4)(a) AN ELECTRIC UTILITY WITH A BROADBAND AFFILIATE SHALL
38 NOT UNREASONABLY WITHHOLD AUTHORIZATION OR DELAY ITS DECISION
39 WHETHER TO PROVIDE AUTHORIZATION TO A COMMERCIAL BROADBAND
40 SUPPLIER TO INSTALL, MAINTAIN, OWN, OPERATE, OR USE ATTACHED
41 FACILITIES ON ELECTRIC SERVICE INFRASTRUCTURE OWNED OR

1 CONTROLLED BY THE ELECTRIC UTILITY. AN ELECTRIC UTILITY MAY ONLY
2 WITHHOLD AUTHORIZATION PURSUANT TO THIS SUBSECTION (4) IF THE
3 REASON FOR WITHHOLDING AUTHORIZATION IS THAT:

4 (I) THERE IS INSUFFICIENT CAPACITY FOR THE ATTACHED
5 FACILITIES; OR

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

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

13 (5) UPON REQUEST OF A COMMERCIAL BROADBAND SUPPLIER, AN
14 ELECTRIC UTILITY AND ANY 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 ELECTRIC
17 UTILITY AND THE BROADBAND AFFILIATE, RESPECTIVELY, ARE IN
18 COMPLIANCE WITH THIS SECTION AND SECTION 40-15-602 (4)(b). IF A
19 DISPUTE ARISES IN A COURT OF COMPETENT JURISDICTION BETWEEN AN
20 ELECTRIC UTILITY OR ITS BROADBAND AFFILIATE AND AN UNAFFILIATED
21 COMMERCIAL BROADBAND SUPPLIER:

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

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

28 (I) ANY CERTIFICATION REQUESTED AND PRODUCED PURSUANT TO
29 THIS SUBSECTION (5);

30 (II) THE TERMS AND CONDITIONS APPLIED TO THE ELECTRIC
31 UTILITY'S OR BROADBAND AFFILIATE'S OFFER TO OR GRANT OF A RIGHT TO
32 THE UNAFFILIATED COMMERCIAL BROADBAND SUPPLIER TO INSTALL,
33 MAINTAIN, OWN, OPERATE, OR USE ATTACHED FACILITIES; AND

34 (III) ANY AUDIT REQUIRED TO BE PERFORMED PURSUANT TO
35 SECTION 40-15-602 (4)(b).

36 (6) NOTWITHSTANDING ANY PROVISION OF THIS PART 6 TO THE
37 CONTRARY, AN ELECTRIC UTILITY THAT IS SUBJECT TO REGULATION UNDER
38 47 U.S.C. SEC. 224, AS AMENDED, AND THE FCC REGULATIONS
39 PROMULGATED PURSUANT TO THAT FEDERAL LAW, IS NOT SUBJECT TO THIS
40 SECTION.

41 (7) NOTHING IN THIS PART 6:

- 1 (a) SUBJECTS AN ELECTRIC UTILITY TO REGULATION BY THE FCC;
2 (b) CONSTITUTES AN EXERCISE OF, OR AN OBLIGATION OR
3 INTENTION TO EXERCISE, THE RIGHT OF THE STATE UNDER 47 U.S.C. SEC.
4 224 (c) TO REGULATE THE RATES, TERMS, AND CONDITIONS FOR POLE
5 ATTACHMENTS, AS DEFINED IN 47 U.S.C. SEC. 224 (a)(4); OR
6 (c) CONSTITUTES A CERTIFICATION, OR AN OBLIGATION OR
7 INTENTION TO CERTIFY, TO THE FCC UNDER 47 U.S.C. SEC. 224.

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

10 **38-4-103. Electric power companies.** (1) Any foreign or
11 domestic corporation organized or chartered for the purpose, among other
12 things, of conducting and maintaining electric power ~~transmission~~ lines
13 for providing power or light by means of electricity for hire ~~shall have~~
14 HAS a right-of-way for the construction, operation, and maintenance of
15 ~~such~~ electric power ~~transmission~~ lines through any patented or unpatented
16 mine or mining claim or other land without the consent of the owner
17 ~~thereof~~ OF THE PATENTED OR UNPATENTED MINE OR MINING CLAIM OR
18 OTHER LAND, if ~~such~~ THE right-of-way is necessary for the purposes
19 proposed.

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

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

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

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

30 **38-5-103. Power of companies to contract.** (1) ~~Such~~ AN electric
31 light power, gas, or pipeline company or ~~such~~ A city or town ~~shall have~~
32 ~~power to~~ MAY contract with any person or corporation, the owner of any
33 ~~lands~~ LAND or any franchise, easement, or interest ~~therein~~ ON THE LAND
34 over or under which the line of electric light wire power or pipeline is
35 proposed to be laid or created for the right-of-way for the construction,
36 maintenance, and operation of its electric light wires, pipes, poles,
37 regulator stations, substations, or other property and for the erection,
38 maintenance, occupation, and operation of offices at suitable distances for
39 the public accommodation.

40 (2) AN ELECTRIC UTILITY, AS DEFINED IN SECTION 40-15-601 (6),
41 EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION MAY, IN

1 ACCORDANCE WITH PART 6 OF ARTICLE 15 OF TITLE 40, INSTALL OR ALLOW
2 THE INSTALLATION OF ANY ATTACHED FACILITY FOR COMMERCIAL
3 BROADBAND SERVICE, AS THOSE TERMS ARE DEFINED IN SECTION
4 40-15-601 (1) AND (3), RESPECTIVELY.

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

** *** ** *** **