

1 HELD BY AN ELECTRIC UTILITY FOR THE SITING OF ELECTRIC SERVICE
2 INFRASTRUCTURE OR FOR THE PURPOSE OF DELIVERING ELECTRIC SERVICE,
3 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
28 SIMPLE INTEREST IN REAL PROPERTY UPON WHICH AN ELECTRIC EASEMENT
29 IS LOCATED.

30 **40-15-602. Electric easements - commercial broadband service**
31 **- broadband affiliates - notice required.** (1) WITH REGARD TO REAL
32 PROPERTY SUBJECT TO AN ELECTRIC EASEMENT, IF AN ELECTRIC UTILITY,
33 OR ANY COMMERCIAL BROADBAND SUPPLIER DESIGNATED BY THE
34 ELECTRIC UTILITY TO ACT ON ITS BEHALF, COMPLIES WITH THE NOTICE AND
35 FILING REQUIREMENTS SET FORTH IN SUBSECTION (2) OF THIS SECTION, THE
36 ELECTRIC UTILITY HOLDING THE ELECTRIC EASEMENT MAY, WITHOUT THE
37 CONSENT OF AN INTEREST HOLDER IN THE REAL PROPERTY SUBJECT TO THE
38 ELECTRIC EASEMENT, TAKE THE FOLLOWING ACTIONS TO THE EXTENT NOT
39 ALREADY PERMITTED BY THE ELECTRIC EASEMENT:

40 (a) INSTALL, MAINTAIN, OR OWN, OR PERMIT ANY COMMERCIAL
41 BROADBAND SUPPLIER, INCLUDING A BROADBAND AFFILIATE, TO INSTALL,
42 MAINTAIN, OR OWN AN ATTACHED FACILITY FOR EXTERNAL USE AND
43 OPERATION BY A COMMERCIAL BROADBAND SUPPLIER, INCLUDING A
44 BROADBAND AFFILIATE, IN PROVIDING COMMERCIAL BROADBAND SERVICE;
45 AND

1 (b) LEASE OR OTHERWISE PROVIDE TO A COMMERCIAL BROADBAND
2 SUPPLIER, INCLUDING A BROADBAND AFFILIATE, ANY EXCESS CAPACITY OF
3 ATTACHED FACILITIES FOR PURPOSES OF PROVIDING COMMERCIAL
4 BROADBAND SERVICE.

5 (2) (a) AT LEAST THIRTY DAYS BEFORE FIRST EXERCISING ITS
6 RIGHTS UNDER ONE OR BOTH OF SUBSECTION (1)(a) OR (1)(b) OF THIS
7 SECTION WITH RESPECT TO AN ELECTRIC EASEMENT OR PORTION OF AN
8 ELECTRIC EASEMENT, AN ELECTRIC UTILITY OR ITS DESIGNATED
9 COMMERCIAL BROADBAND SUPPLIER MUST SEND NOTICE TO EACH
10 PROPERTY OWNER THAT HOLDS AN INTEREST IN THE REAL PROPERTY
11 SUBJECT TO THE ELECTRIC EASEMENT AND MUST FILE A MEMORANDUM IN
12 THE OFFICE OF THE COUNTY CLERK AND RECORDER IN EACH COUNTY IN
13 WHICH THE ELECTRIC UTILITY IS EXERCISING ITS RIGHTS UNDER
14 SUBSECTION (1) OF THIS SECTION. IF, WITHIN ONE YEAR AFTER DELIVERY
15 OF NOTICE PURSUANT TO THIS SUBSECTION (2), AN ELECTRIC UTILITY HAS
16 NOT COMMENCED ENGAGING IN ANY OF THE ACTIONS SET FORTH IN
17 SUBSECTION (1) OF THIS SECTION, INCLUDING THE COMMENCEMENT OF
18 CONSTRUCTING A NEW INSTALLATION, THE ELECTRIC UTILITY OR
19 DESIGNATED COMMERCIAL BROADBAND SUPPLIER MUST REDELIVER
20 NOTICE PURSUANT TO THIS SUBSECTION (2) BEFORE EXERCISING ITS RIGHTS
21 UNDER SUBSECTION (1) OF THIS SECTION. IF AN ELECTRIC UTILITY OR ITS
22 DESIGNATED COMMERCIAL BROADBAND SUPPLIER FAILS TO DELIVER
23 SUFFICIENT NOTICE IN ACCORDANCE WITH THIS SUBSECTION (2), IT MAY
24 ONLY COMMENCE EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS
25 SECTION UPON SUBSEQUENT DELIVERY OF SUFFICIENT NOTICE, AT WHICH
26 TIME THE ONE-YEAR PERIOD WILL COMMENCE.

27 (b) A LETTER PROVIDING NOTICE PURSUANT TO THIS SUBSECTION
28 (2) MUST:

29 (I) BE SENT BY FIRST-CLASS MAIL FROM OR ON BEHALF OF THE
30 ELECTRIC UTILITY TO THE INTEREST HOLDER AT THE LAST KNOWN
31 ADDRESS BASED ON THE ELECTRIC UTILITY'S RECORDS OR THE ADDRESS
32 LISTED FOR THE PROPERTY IN THE RECORDS OF THE OFFICE OF THE COUNTY
33 CLERK AND RECORDER;

34 (II) INCLUDE THE NAME, ADDRESS, TELEPHONE NUMBER, AND
35 NAMED POINT OF CONTACT FOR THE ELECTRIC UTILITY AND, IF DELIVERED
36 BY A COMMERCIAL BROADBAND SUPPLIER DESIGNATED BY THE ELECTRIC
37 UTILITY, THE NAME, ADDRESS, TELEPHONE NUMBER, AND NAMED POINT OF
38 CONTACT FOR THE DESIGNATED COMMERCIAL BROADBAND SUPPLIER;

39 (III) INCLUDE THE PROPERTY ADDRESS AND APPROXIMATE
40 LOCATION OF THE ELECTRIC EASEMENT, WHICH NEED NOT INCLUDE A
41 LEGAL DESCRIPTION, LAND TITLE SURVEY, PLAT, OR OTHER DESIGNATION
42 OF THE EXACT BOUNDARIES OF THE ELECTRIC EASEMENT;

43 (IV) INCLUDE:

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

45 (B) A COPY OF THE LANGUAGE OF SUBSECTION (1) OF THIS SECTION

1 WITH AN INDICATION OF WHETHER THE ELECTRIC UTILITY IS EXERCISING
2 RIGHTS UNDER ONE OR MORE OF SUBSECTION (1)(a) OR (1)(b) OF THIS
3 SECTION;

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

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

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

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

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

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

29 (b) CAUSE A FINANCIAL AUDIT TO BE PERFORMED BY AN
30 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, WITHIN TWO YEARS AFTER
31 COMMENCEMENT OF COMMERCIAL OPERATION OF RETAIL COMMERCIAL
32 BROADBAND SERVICE AND AT LEAST ONCE EVERY TWO YEARS
33 THEREAFTER, WITH RESPECT TO THE BROADBAND AFFILIATE'S PROVISION
34 OF COMMERCIAL BROADBAND SERVICE, INCLUDING AN AUDIT OF THE
35 ALLOCATION OF COSTS FOR PROPERTY AND SERVICES THAT ARE USED IN
36 BOTH THE PROVISION OF COMMERCIAL BROADBAND SERVICE AND THE
37 ELECTRIC UTILITY'S PROVISION OF ELECTRIC SERVICE; AND

38 (c) (I) NOT CAUSE OR ALLOW THE ELECTRIC UTILITY TO USE ITS
39 EXCLUSIVE RIGHT TO PROVIDE ELECTRIC SERVICES WITHIN ITS EXCLUSIVE
40 TERRITORY TO DIRECTLY OR INDIRECTLY CROSS-SUBSIDIZE THE
41 BROADBAND AFFILIATE OR ITS PROVISION OF COMMERCIAL BROADBAND
42 SERVICE, WHETHER BY DISCRIMINATORY OR BELOW FAIR MARKET VALUE
43 PRICING; PAYMENT OF CAPITAL OR OPERATING COSTS PROPERLY CHARGED
44 TO THE BROADBAND AFFILIATE UNDER APPLICABLE ACCOUNTING RULES;
45 USE OF ANY REVENUE FROM OR SUBSIDY FOR THE PROVISION OF ELECTRIC

1 SERVICE TO SUPPORT COMMERCIAL BROADBAND SERVICE, EXCEPT IN
2 CONNECTION WITH THE ELECTRIC UTILITY'S PROVISION OF ELECTRICITY; OR
3 OTHERWISE.

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

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

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

12 (5) THE TERMS AND CONDITIONS OF A WRITTEN ELECTRIC
13 EASEMENT APPLY TO AN ELECTRIC UTILITY'S USES OF THE ELECTRIC
14 EASEMENT SET FORTH IN SUBSECTION (1) OF THIS SECTION, EXCEPT TO THE
15 EXTENT THAT THOSE TERMS AND CONDITIONS PROHIBIT OR HAVE THE
16 EFFECT OF PROHIBITING OR MATERIALLY IMPAIRING THE ELECTRIC
17 UTILITY'S EXERCISE OF RIGHTS UNDER SUBSECTION (1) OF THIS SECTION.
18 A PROHIBITION ON ABOVEGROUND ELECTRIC SERVICE INFRASTRUCTURE
19 CONTAINED WITHIN A WRITTEN ELECTRIC EASEMENT CONSTITUTES A
20 PROHIBITION ON ABOVEGROUND ATTACHED FACILITIES.

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

25 **40-15-603. Statute of limitations - damages - limitations on**
26 **damages.** (1) (a) NO CLAIM OR CAUSE OF ACTION AGAINST AN ELECTRIC
27 UTILITY OR A COMMERCIAL BROADBAND SUPPLIER CONCERNING THE
28 ELECTRIC UTILITY'S OR COMMERCIAL BROADBAND SUPPLIER'S EXERCISE OF
29 RIGHTS UNDER THIS PART 6 OR ANY ACTIONS THAT THE ELECTRIC UTILITY
30 OR COMMERCIAL BROADBAND SUPPLIER TAKES BEFORE THE EFFECTIVE
31 DATE OF THIS SECTION THAT, IF TAKEN AFTER THE EFFECTIVE DATE OF THIS
32 SECTION, WOULD BE AUTHORIZED UNDER SECTION 40-15-602 (1) MAY BE
33 BROUGHT BY OR ON BEHALF OF AN INTEREST HOLDER MORE THAN TWO
34 YEARS AFTER THE LATEST OF:

35 (I) THE EFFECTIVE DATE OF THIS SECTION;

36 (II) THE DATE OF DELIVERY OF NOTICE PURSUANT TO SECTION
37 40-15-602 (2); OR

38 (III) THE DATE OF RECORDING OF A MEMORANDUM PURSUANT TO
39 SECTION 40-15-602 (2).

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

45 (c) NOTHING IN THIS SECTION 40-15-603 EXTENDS THE STATUTORY

1 LIMITATION PERIOD APPLICABLE TO A CLAIM OR REVIVES AN EXPIRED
2 CLAIM.

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

7 (3) IF AN INTEREST HOLDER BRINGS A TRESPASS CLAIM, INVERSE
8 CONDEMNATION CLAIM, OR ANY OTHER CLAIM OR CAUSE OF ACTION FOR
9 AN ELECTRIC UTILITY'S OR COMMERCIAL BROADBAND SUPPLIER'S EXERCISE
10 OF RIGHTS OR PERFORMANCE OF ACTIONS DESCRIBED IN SUBSECTION (1)
11 OF THIS SECTION, THE FOLLOWING APPLIES TO THE CLAIM OR CAUSE OF
12 ACTION:

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

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

20 (A) PROFITS, FEES, OR REVENUE DERIVED FROM THE ATTACHED
21 FACILITIES; OR

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

25 (II) CONSIDERATION MUST BE GIVEN TO ANY INCREASE IN VALUE
26 TO THE REAL PROPERTY INTEREST RESULTING FROM THE AVAILABILITY OF
27 COMMERCIAL BROADBAND SERVICE TO THE REAL PROPERTY UNDERLYING
28 THE REAL PROPERTY INTEREST THAT ARISES FROM THE INSTALLATION OF
29 ATTACHED FACILITIES.

30 (b) THE INTEREST HOLDER MUST MAKE REASONABLE
31 ACCOMMODATIONS FOR THE ELECTRIC UTILITY OR COMMERCIAL
32 BROADBAND SUPPLIER TO PERFORM AN APPRAISAL OR INSPECTION OF THE
33 REAL PROPERTY WITHIN NINETY DAYS FOLLOWING ANY WRITTEN REQUEST
34 FOR AN APPRAISAL OR INSPECTION. IF AN INTEREST HOLDER FAILS TO MAKE
35 SUCH ACCOMMODATIONS, THE ELECTRIC UTILITY OR COMMERCIAL
36 BROADBAND SUPPLIER HAS NO FURTHER LIABILITY TO THE INTEREST
37 HOLDER.

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

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

44 (II) SHALL NOT BE DEEMED TO CONTINUE, ACCRUE, OR
45 ACCUMULATE; AND

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

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

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

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

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

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

36 (a) CHARGE RECURRING FEES NOT EXCEEDING ANY FEES IN
37 ACCORDANCE WITH RATES THAT APPLY TO ATTACHMENTS TO POLES
38 UNDER SECTION 224 (e) OF THE FEDERAL "COMMUNICATIONS ACT OF
39 1934", AS AMENDED, AND THE FCC'S REGULATIONS AND POLICIES
40 IMPLEMENTING THE FEDERAL ACT CONCERNING POLE ATTACHMENT RATES
41 THAT APPLY TO INVESTOR-OWNED UTILITIES, AS SET FORTH IN 47 CFR
42 1.1406, TO ALL COMMERCIAL BROADBAND SUPPLIERS FOR ATTACHMENTS
43 ON A POLE OR ELECTRIC SERVICE INFRASTRUCTURE THAT IS OWNED OR
44 CONTROLLED BY THE ELECTRIC UTILITY OR BROADBAND AFFILIATE;
45 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
42 CONTROLLED BY THE ELECTRIC UTILITY. AN ELECTRIC UTILITY MAY ONLY
43 WITHHOLD AUTHORIZATION PURSUANT TO THIS SUBSECTION (4) IF THE
44 REASON FOR WITHHOLDING AUTHORIZATION IS THAT:

45 (I) THERE IS INSUFFICIENT CAPACITY FOR THE ATTACHED

1 FACILITIES; OR
2 (II) CONCERNS OF SAFETY OR RELIABILITY OR GENERALLY
3 APPLICABLE ENGINEERING PURPOSES WEIGH AGAINST GRANTING THE
4 AUTHORIZATION.
5 (b) AN ELECTRIC UTILITY THAT WITHHOLDS AUTHORIZATION
6 PURSUANT TO THIS SUBSECTION (4) SHALL PROMPTLY NOTIFY THE
7 COMMERCIAL BROADBAND SUPPLIER IN WRITING OF THE REASONS FOR
8 WITHHOLDING AUTHORIZATION.
9 (5) 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 AND SECTION 40-15-602 (4)(b). IF A
15 DISPUTE ARISES IN A COURT OF COMPETENT JURISDICTION BETWEEN AN
16 ELECTRIC UTILITY OR ITS BROADBAND AFFILIATE AND AN UNAFFILIATED
17 COMMERCIAL BROADBAND SUPPLIER:
18 (a) REGARDING MATTERS ADDRESSED IN THIS PART 6, THE PARTIES
19 TO THE DISPUTE HAVE STANDING TO FILE A CLAIM OR CAUSE OF ACTION IN
20 ANY COURT OF COMPETENT JURISDICTION IN THE STATE; AND
21 (b) THE FOLLOWING ARE DISCOVERABLE AND ADMISSIBLE AS
22 EVIDENCE IN COURT REGARDING THE ELECTRIC UTILITY'S AND ITS
23 BROADBAND AFFILIATE'S COMPLIANCE WITH THIS SECTION:
24 (I) ANY CERTIFICATION REQUESTED AND PRODUCED PURSUANT TO
25 THIS SUBSECTION (5);
26 (II) THE TERMS AND CONDITIONS APPLIED TO THE ELECTRIC
27 UTILITY'S OR BROADBAND AFFILIATE'S OFFER TO OR GRANT OF A RIGHT TO
28 THE UNAFFILIATED COMMERCIAL BROADBAND SUPPLIER TO INSTALL,
29 MAINTAIN, OWN, OPERATE, OR USE ATTACHED FACILITIES; AND
30 (III) ANY AUDIT REQUIRED TO BE PERFORMED PURSUANT TO
31 SECTION 40-15-602 (4)(b).
32 (6) NOTWITHSTANDING ANY PROVISION OF THIS PART 6 TO THE
33 CONTRARY, AN ELECTRIC UTILITY THAT IS SUBJECT TO REGULATION UNDER
34 47 U.S.C. SEC. 224, AS AMENDED, AND THE FCC REGULATIONS
35 PROMULGATED PURSUANT TO THAT FEDERAL LAW, IS NOT SUBJECT TO THIS
36 SECTION.
37 (7) NOTHING IN THIS PART 6:
38 (a) SUBJECTS AN ELECTRIC UTILITY TO REGULATION BY THE FCC;
39 (b) CONSTITUTES AN EXERCISE OF, OR AN OBLIGATION OR
40 INTENTION TO EXERCISE, THE RIGHT OF THE STATE UNDER 47 U.S.C. SEC.
41 224 (c) TO REGULATE THE RATES, TERMS, AND CONDITIONS FOR POLE
42 ATTACHMENTS, AS DEFINED IN 47 U.S.C. SEC. 224 (a)(4); OR
43 (c) CONSTITUTES A CERTIFICATION, OR AN OBLIGATION OR
44 INTENTION TO CERTIFY, TO THE FCC UNDER 47 U.S.C. SEC. 224.
45 **SECTION 2.** In Colorado Revised Statutes, **amend** 38-4-103 as

1 follows:

2 **38-4-103. Electric power companies.** (1) Any foreign or
3 domestic corporation organized or chartered for the purpose, among other
4 things, of conducting and maintaining electric power ~~transmission~~ lines
5 for providing power or light by means of electricity for hire ~~shall have~~
6 HAS a right-of-way for the construction, operation, and maintenance of
7 ~~such~~ electric power ~~transmission~~ lines through any patented or unpatented
8 mine or mining claim or other land without the consent of the owner
9 ~~thereof~~ OF THE PATENTED OR UNPATENTED MINE OR MINING CLAIM OR
10 OTHER LAND, if ~~such~~ THE right-of-way is necessary for the purposes
11 proposed.

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

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

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

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

22 **38-5-103. Power of companies to contract.** (1) ~~Such~~ AN electric
23 light power, gas, or pipeline company or ~~such~~ A city or town ~~shall have~~
24 ~~power to~~ MAY contract with any person or corporation, the owner of any
25 ~~lands~~ LAND or any franchise, easement, or interest ~~therein~~ ON THE LAND
26 over or under which the line of electric light wire power or pipeline is
27 proposed to be laid or created for the right-of-way for the construction,
28 maintenance, and operation of its electric light wires, pipes, poles,
29 regulator stations, substations, or other property and for the erection,
30 maintenance, occupation, and operation of offices at suitable distances for
31 the public accommodation.

32 (2) AN ELECTRIC UTILITY, AS DEFINED IN SECTION 40-15-601 (6),
33 EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION MAY, IN
34 ACCORDANCE WITH PART 6 OF ARTICLE 15 OF TITLE 40, INSTALL OR ALLOW
35 THE INSTALLATION OF ANY ATTACHED FACILITY FOR COMMERCIAL
36 BROADBAND SERVICE, AS THOSE TERMS ARE DEFINED IN SECTION
37 40-15-601 (1) AND (3), RESPECTIVELY.

38 **SECTION 4. Act subject to petition - effective date.** This act
39 takes effect at 12:01 a.m. on the day following the expiration of the
40 ninety-day period after final adjournment of the general assembly (August
41 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
42 referendum petition is filed pursuant to section 1 (3) of article V of the
43 state constitution against this act or an item, section, or part of this act
44 within such period, then the act, item, section, or part will not take effect
45 unless approved by the people at the general election to be held in

- 1 November 2020 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor."

** ** ** ** **