

CHAPTER 171

(HB 320)

AN ACT relating to the provision of broadband services, and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) *The General Assembly recognizes and declares:*

- (a) *The provision of broadband service to residential, commercial, and industrial customers is critical to securing a sound economy and promoting the general welfare of the Commonwealth; and*
- (b) *Distribution cooperatives are able to access and leverage federal funding to extend and enhance the availability of broadband service to Kentucky residents who are currently unserved or underserved.*

(2) *As used in this section:*

- (a) *"Broadband" means any wireline, fixed wireless, or fixed terrestrial technology having a capacity to transmit data from or to the Internet with a minimum speed of twenty-five (25) megabits per second downstream and three (3) megabits per second upstream as defined by the Federal Communications Commission or the United States Department of Agriculture and any amendments to those definitions. If the agencies use different speed definitions, the faster speed definition shall apply;*
- (b) *"Underserved area" means any project area where broadband service with a minimum twenty-five (25) megabits per second downstream and three (3) megabits per second upstream is not available; and*
- (c) *"Unserved area" means any project area where broadband service with a minimum ten (10) megabits per second downstream and one (1) megabit per second upstream is not available.*

(3) *Notwithstanding any other statute to the contrary:*

- (a) *A distribution cooperative may facilitate the operation of an affiliate engaged exclusively in the provision of broadband service to unserved or underserved households and businesses by:*
 - 1. *Leasing excess capacity on any fiber optic cable used to support the distribution cooperative's distribution system;*
 - 2. *Issuing securities or evidences of indebtedness in an amount not to exceed twenty-five percent (25%) of the net book value of its assets, the proceeds of which shall be used for the exclusive purpose of capitalizing the affiliate; or*
 - 3. *Pledging up to twenty-five percent (25%) of the net book value of its assets as collateral for a loan entered into by the affiliate for the purpose of providing broadband services; and*
- (b) *The commission shall grant approval of the leasing of excess capacity, the issuing of securities or evidences of indebtedness, or the pledging of assets.*

(4) *The commission shall take into consideration the policy of encouraging the provision of broadband service to unserved or underserved households and businesses throughout the Commonwealth when determining whether:*

- (a) *The proposed investment will result in wasteful duplication of investment in the case of any distribution cooperative's application for a certificate of public convenience and necessity under KRS 278.020 that includes the construction of a fiber optic cable system with capacity in excess of that which is necessary to support the distribution cooperative's system under subsection (3)(a)1. of this section; and*
- (b) *The issuance or assumption of securities or evidence of indebtedness satisfies the criteria of KRS 278.300(3) in the case of any distribution cooperative's application for approval of an issuance of securities or evidence of indebtedness or pledge of assets under subsection (3)(a)2. and 3. of this section.*

(5) *A distribution cooperative shall comply with the cost allocation requirements of:*

- (a) **KRS 278.2201, 278.2203, 278.2205, 278.2207, 278.2209, and 278.2211; and**
 - (b) **Only KRS 278.2213(1) and (3) with regard to any costs associated with its facilitation of an affiliate's provision of broadband services.**
- (6) **Prior to December 31, 2021, the commission shall promulgate administrative regulations regarding pole attachments under the commission's jurisdiction, including those necessary for the provision of broadband service.**

➔Section 2. KRS 278.5462 is amended to read as follows:

- (1) The provision of broadband services shall be market-based and not subject to state administrative regulation, **except as provided in this section and Section 1 of this Act.** Notwithstanding any other provision of law to the contrary except as provided in subsections (3) and (4) of this section, no agency of the state shall impose or implement any requirement upon a broadband service provider with respect to the following:
 - (a) The availability of facilities or equipment used to provide broadband services; or
 - (b) The rates, terms or conditions for, or entry into, the provision of broadband service.
- (2) Any requirement imposed upon broadband service in existence as of July 15, 2004, is hereby voided upon enactment of KRS 278.546 to 278.5462. The provisions of this section do not limit or modify the duties of a local exchange carrier or an affiliate of a local exchange carrier to provide unbundled access to network elements or the commission's authority to arbitrate and enforce interconnection agreements, including provisions related to remote terminals and central office facilities, to the extent required under 47 U.S.C. secs. 251 and 252, and any regulations issued by the Federal Communications Commission at rates determined in accordance with the standards established by the Federal Communications Commission pursuant to 47 C.F.R. secs. 51.503 to 51.513, inclusive of any successor regulations. Nothing contained in KRS 278.546 to 278.5462 shall be construed to preclude the application of access or other lawful rates and charges to broadband providers. Nothing contained in KRS 278.546 to 278.5462 shall preclude, with respect to broadband services, access for those service providers that use or make use of the publicly switched network.
- (3) (a) **A broadband service provider shall ensure that adequate broadband services are provided in a manner to prevent seasonal outages or any outage that is more than intermittent in nature.**
 (b) **In addition to all other powers conferred to it under this chapter, the commission shall have jurisdiction to resolve** ~~may assist in the resolution of consumer service~~ **complaints relating to service outages.**
- (4) No telephone utility shall refuse to provide wholesale digital subscriber line service to competing local exchange carriers on the same terms and conditions, filed in tariff with the Federal Communications Commission, that it provides to Internet service providers.

➔Section 3. (1) There is hereby appropriated federal funds in the amount of \$250,000,000 in fiscal year 2021-2022 to the broadband deployment fund, with no more than \$50,000,000 of which to be awarded before April 1, 2022.

(2) The agency administering the broadband deployment fund shall promulgate administrative regulations to ensure that:

- (a) The moneys are awarded based on the following criteria in the order as listed:
 1. Projects in underserved areas or unserved areas where local, state, or federal funds are not currently available;
 2. Projects within underserved areas or unserved areas where local, state, or federal broadband funds are inadequate; and
 3. Projects that reach the customers that are the least economical to serve;
- (b) A request for proposal shall be issued for projects;
- (c) Projects will require:
 1. A private match of moneys of not less than 50 percent of the total project cost; or
 2. Matching funds from a city, county, urban county government, or consolidated local government of not less than 50 percent of the total project cost; and

- (d) Project scope should be for the smallest feasible geographical area.
- (3) The agency may provide incentive for timely completion and disincentive for not meeting agreed upon timeframes.

Veto overridden March 29, 2021.