

1 AN ACT relating to broadband deployment, making an appropriation therefor, and
2 declaring an emergency.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO
5 READ AS FOLLOWS:

6 *(1) There is established the Office of Broadband Development, which shall:*

7 *(a) Be administratively attached to the Kentucky Infrastructure Authority;*

8 *(b) Encourage, foster, develop, and improve broadband within the*
9 *Commonwealth to:*

10 *1. Drive job creation, promote innovation, and expand markets for*
11 *Kentucky businesses; and*

12 *2. Serve the ongoing and growing needs of Kentucky's:*

13 *a. Agricultural, educational, health care, and public safety systems;*

14 *b. Industries and businesses;*

15 *c. Governmental operations; and*

16 *d. Citizens;*

17 *(c) Improve broadband accessibility for unserved and underserved*
18 *communities and populations;*

19 *(d) Develop, coordinate, administer, and implement the Commonwealth's*
20 *broadband deployment fund under Section 3 of this Act;*

21 *(e) Perform all administrative functions necessary to carry out the purposes of*
22 *this section;*

23 *(f) On behalf of the Commonwealth, serve as:*

24 *1. The central broadband planning and coordination entity;*

25 *2. The single point of contact and liaison to federal agencies and*
26 *programs regarding broadband issues, including but not limited to:*

27 *a. National Telecommunications and Information Administration;*

- 1 **b. Federal Communications Commission;**
- 2 **c. United States Department of Agriculture Rural Utilities Service;**
- 3 **and**
- 4 **d. United States Treasury;**
- 5 **3. An information clearinghouse for federal programs providing**
- 6 **financial assistance to institutions located in rural areas seeking to**
- 7 **obtain access to broadband;**
- 8 **(g) Coordinate with other state, regional, local, and private entities to:**
- 9 **1. Develop and implement a statewide broadband plan, including**
- 10 **relevant goals and objectives;**
- 11 **2. Develop and encourage cost-effective broadband;**
- 12 **3. Make recommendations for broadband infrastructure development,**
- 13 **particularly in rural, unserved, and underserved areas; and**
- 14 **4. Provide consultation services to local units of government or other**
- 15 **project sponsors in connection with the planning, acquisition,**
- 16 **improvement, construction, or development of any broadband**
- 17 **deployment project;**
- 18 **(h) Monitor the broadband development efforts of other states and nations;**
- 19 **(i) Maintain data and statistics on broadband throughout the Commonwealth**
- 20 **by:**
- 21 **1. Collecting broadband availability data from Kentucky broadband**
- 22 **providers and other sources on a street address or location-specific**
- 23 **basis;**
- 24 **2. Verifying the accuracy of that data through on-the-ground testing;**
- 25 **3. Creating and maintaining a statewide interactive map displaying**
- 26 **broadband availability, which shall be available for public and state**
- 27 **government use online;**

- 1 4. Analyzing the deployment data collected to inform and guide future
2 investments in broadband infrastructure, including moneys expended
3 under the broadband deployment fund;
- 4 5. Empirically validating, on a targeted basis, the accuracy of broadband
5 data that is routinely collected by the Federal Communications
6 Commission to pinpoint areas of overstatement and understatement
7 that may exist;
- 8 6. Challenging the validity of the data as may be warranted, on behalf of
9 the Commonwealth, to ensure that this state is receiving its due share
10 of funding from federal broadband programs; and
- 11 7. Monitoring the progress of federal awards for deploying broadband
12 infrastructure to Kentucky locations and issuing an annual report to
13 the Governor and the Interim Joint Committee on Appropriations and
14 Revenue by November 1 of each year;
- 15 (j) Develop a process for:
- 16 1. Receiving complaints related to insufficient broadband service;
17 2. Incorporating forms for the collection of data related to the
18 complaints;
- 19 3. Resolving complaints;
- 20 4. Reporting the information collected on unresolved complaints; and
21 5. Referring complaints to the Office of the Attorney General, Federal
22 Communications Commission, or Federal Trade Commission, as
23 appropriate; and
- 24 (k) Perform other duties and responsibilities as necessary to promote the
25 development of broadband within the Commonwealth.
- 26 (2) The office shall have all the power, not explicitly prohibited by statute, necessary
27 and convenient to carry out and effectuate the purposes of this section, including:

1 (a) Entering into contracts or agreements necessary or incidental to the
 2 performance of its duties, functions, and responsibilities;

3 (b) Soliciting, borrowing, accepting, receiving, and expending funds from any
 4 public or private source, property, labor, or other things of value to be used
 5 to carry out the office's operations, functions, and responsibilities; and

6 (c) Promulgating administrative regulations under KRS Chapter 13A.

7 (3) (a) The authority may contract with a private nonprofit corporation with at
 8 least five (5) years of broadband and telecommunications public policy
 9 research and mapping experience to fulfill the purposes, duties, and
 10 responsibilities of the office as required in subsections (1) and (2) of this
 11 section.

12 (b) If the authority exercises its option to contract with an entity to fulfill the
 13 office's obligations under this section, the procurement shall not abrogate
 14 the authority from fulfilling the office's duties or achieving the timelines for
 15 issuing grants in Section 4 of this Act.

16 (4) The authority shall report the activities of the office to the Legislative Research
 17 Commission on a semiannual basis, each January 1 and each July 1.

18 ➔Section 2. KRS 224A.011 is amended to read as follows:

19 As used in this chapter, unless the context requires otherwise:

20 (1) "Administrative fee" means a fee assessed and collected by the authority from
 21 borrowers and applicants under assistance agreements, to be used for operational
 22 expenses of the authority;

23 (2) "Applicable interest rate" means the rate of interest which shall be used as part of
 24 the repayment criteria for an assistance agreement between a governmental agency
 25 and the authority, and shall be determined by the authority pertinent to the source of
 26 funds from which the assistance agreement is funded;

27 (3) "Applicant" means a governmental agency or private sector entity that has

- 1 submitted an application to the office~~[authority]~~ for a grant from the broadband
2 deployment fund;
- 3 (4) "Application" means an application submitted by an applicant for a grant from the
4 broadband deployment fund;
- 5 (5) "Assistance agreement" means the agreement to be made and entered into by and
6 between a governmental agency or a private entity and the authority, as authorized
7 by this chapter, providing for a lease, loan, services, or grant to a governmental
8 agency or a private entity or for the purchase of obligations issued by the
9 governmental agency, and for the repayment thereof to the authority by the
10 governmental agency or a private entity;
- 11 (6) "Authority" means the Kentucky Infrastructure Authority, which is created by this
12 chapter;
- 13 (7) "Authority revenues" means the totality of all:
- 14 (a) Service charges;
- 15 (b) Utility tax receipts, to the extent not otherwise committed and budgeted by the
16 authority during any fiscal period of the authority;
- 17 (c) Any gifts, grants, or loans received, to the extent not otherwise required to be
18 applied;
- 19 (d) Any and all appropriations made to the authority by the General Assembly of
20 the Commonwealth of Kentucky, to the extent not otherwise required to be
21 applied;
- 22 (e) All moneys received in repayment of and for interest on any loans made by the
23 authority to a governmental agency, except as provided in KRS 224A.111,
24 224A.1115, and 224A.112, or as principal of and interest on any obligations
25 issued by a governmental agency and purchased by the authority, or as receipts
26 under any assistance agreement;
- 27 (f) The proceeds of bonds or long-term debt obligations of governmental

1 agencies pledged to the payment of bond anticipation notes issued by the
2 authority on behalf of the said governmental agency to provide interim
3 construction financing; and

4 (g) Payments under agreements with any agencies of the state and federal
5 government;

6 (8) "Borrower or borrowing entity" means any agency of the state or its political
7 subdivisions, any city, or any special district created under the laws of the state
8 acting individually or jointly under interagency or interlocal cooperative agreements
9 to enter into assistance agreements with the authority;

10 ~~(9) "Broadband" means any wireline or fixed terrestrial technology having a capacity to~~
11 ~~transmit data from or to the Internet with a minimum speed of twenty five (25)~~
12 ~~megabits per second downstream and three (3) megabits per second upstream as~~
13 ~~defined by the Federal Communications Commission or the United States~~
14 ~~Department of Agriculture and any amendments to those definitions. If the agencies~~
15 ~~use different speed definitions, the faster speed definition shall apply to KRS~~
16 ~~224A.110, 224A.112, and 224A.1121;~~

17 ~~(10)~~ "Broadband deployment fund" means a fund to assist with the construction,
18 development, or improvement of broadband infrastructure, broadband services, or
19 technologies that constitute a part of, or are related to, broadband infrastructure or
20 broadband services, to provide for broadband service in underserved or unserved
21 areas of the Commonwealth;

22 ~~(10)~~~~(11)~~ "Broadband deployment project" means a proposed deployment of broadband
23 service infrastructure set forth in an application for grant funding under KRS
24 224A.112;

25 ~~(11)~~~~(12)~~ "Broadband deployment project area" means a geographic area determined by
26 census block~~s~~ ~~or~~ shapefile geospatial data, or list of addresses ~~for~~ which *has*
27 *been proposed for* grant funding ~~has been authorized~~ under this section and KRS

1 224A.110, 224A.112, and 224A.1121;

2 ~~(12)~~~~(13)~~ "Census block" means the smallest geographic unit used by the United States
3 Census Bureau that is reported on the Federal Communications Commission (FCC)
4 Form 477 relating to fixed broadband deployment data;

5 ~~(13)~~~~(14)~~ "Community flood damage abatement project" means any structural or
6 nonstructural study, plan, design, construction, development, improvement, or other
7 activity to provide for flood control;

8 ~~(14)~~~~(15)~~ "Construction" means and includes but is not limited to:

9 (a) Preliminary planning to determine the economic and engineering feasibility of
10 infrastructure projects, the engineering, architectural, legal, fiscal, and
11 economic investigations, and studies necessary thereto, and surveys, designs,
12 plans, working drawings, specifications, procedures, and other actions
13 necessary to the construction of infrastructure or solid waste projects;

14 (b) The erection, building, acquisition, alteration, remodeling, improvement, or
15 extension of infrastructure or solid waste projects; and

16 (c) The inspection and supervision of the construction of infrastructure or solid
17 waste projects and all costs incidental to the acquisition and financing of
18 same. This term shall also relate to and mean any other physical devices or
19 appurtenances in connection with, or reasonably attendant to, infrastructure or
20 solid waste projects;

21 ~~(15)~~~~(16)~~ "Dams" means any artificial barrier, including appurtenant works, which does
22 or can impound or divert water, and which either:

23 (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the
24 stream or watercourse at the downstream toe of the barrier, as determined by
25 the Energy and Environment Cabinet; or

26 (b) Has or will have an impounding capacity at maximum water storage elevation
27 of fifty (50) acre feet or more;

1 ~~(16)~~~~(17)~~ "Distribution facilities" means all or any part of any facilities, devices, and
2 systems used and useful in obtaining, pumping, storing, treating, and distributing
3 water for agricultural, industrial, commercial, recreational, public, and domestic
4 use;

5 ~~(17)~~~~(18)~~ "Energy and Environment Cabinet" means the Kentucky Energy and
6 Environment Cabinet, or its successor, said term being meant to relate specifically
7 to the state agency which is designated as the water pollution agency for the
8 Commonwealth of Kentucky, for purposes of the federal act;

9 ~~(18)~~~~(19)~~ "Federal act" means the Federal Clean Water Act (33 U.S.C. secs. 1251 et
10 seq.) as said federal act may be amended from time to time in the future, or any
11 other enactment of the United States Congress providing funds that may assist in
12 carrying out the purposes of the authority;

13 ~~(19)~~~~(20)~~ "Federally assisted wastewater revolving fund" means that fund which will
14 receive federal and state funds or the proceeds from the sale of revenue bonds of the
15 authority for the purpose of providing loans to finance construction of publicly
16 owned treatment works as defined in Section 212 of the federal act and for the
17 implementation of a management program established under Section 319 of the
18 federal act and for the development and implementation of a conservation and
19 management plan under Section 320 of the federal act;

20 ~~(20)~~~~(21)~~ "Governmental agency" means any incorporated city or municipal corporation,
21 or other agency, or unit of government within or a department or a cabinet of the
22 Commonwealth of Kentucky, now having or hereafter granted, the authority and
23 power to finance, acquire, construct, or operate infrastructure or solid waste
24 projects. This definition shall specifically apply but not by way of limitation to
25 incorporated cities; counties, including any counties containing a metropolitan
26 sewer district; sanitation districts; water districts; water associations if these
27 associations are permitted to issue interest-bearing obligations which interest would

1 be excludable from gross income under Section 103 of the Internal Revenue Code
2 of 1986 as amended; sewer construction districts; metropolitan sewer districts;
3 sanitation taxing districts; a regional wastewater commission established under
4 KRS 65.8901 to 65.8923; and any other agencies, commissions, districts, or
5 authorities (either acting alone, or in combination with one another in accordance
6 with any regional or area compact, or intergovernmental cooperative agreements),
7 now or hereafter established in accordance with the laws of the Commonwealth of
8 Kentucky having and possessing the described powers described in this subsection;

9 (21)~~[(22)]~~ "Industrial waste" means any liquid, gaseous, or solid waste substances
10 resulting from any process of industry, manufacture, trade, or business, or from the
11 mining or taking, development, processing, or recovery of any natural resources,
12 including heat and radioactivity, together with any sewage as is present therein,
13 which pollutes the waters of the state, and specifically, but not by way of limitation,
14 means heat or thermal differentials created in the waters of the state by any
15 industrial processing, generating, or manufacturing processes;

16 (22)~~[(23)]~~ "Infrastructure project" means any construction or acquisition of treatment
17 works, facilities related to the collection, transportation, and treatment of
18 wastewater as defined in KRS 65.8903, distribution facilities, or water resources
19 projects instituted by a governmental agency or an investor-owned water utility
20 which is approved by the authority and, if required, by the Energy and Environment
21 Cabinet, Public Service Commission, or other agency; solid waste projects; dams;
22 storm water control and treatment systems; gas or electric utility; broadband
23 deployment project; or any other public utility or public service project which the
24 authority finds would assist in carrying out the purposes set out in KRS 224A.300;

25 (23)~~[(24)]~~ "Infrastructure revolving fund" means that fund which will receive state funds,
26 the proceeds from the sale of revenue bonds of the authority or other moneys
27 earmarked for that fund for the purpose of providing loans or grants to finance

1 construction or acquisition of infrastructure projects as defined in this section;

2 ~~(24)~~~~(25)~~ "Loan or grant" means moneys to be made available to governmental agencies
3 by the authority for the purpose of defraying all or any part of the total costs
4 incidental to construction or acquisition of any infrastructure project;

5 ~~(25)~~~~(26)~~ "Market interest rate" means the interest rate determined by the authority
6 under existing market conditions at the time the authority shall provide financial
7 assistance to a governmental agency;

8 ~~(26)~~~~(27)~~ "Obligation of a governmental agency" means a revenue bond, bond
9 anticipation note, revenue anticipation note, lease, or other obligation issued by a
10 governmental agency under KRS 58.010 et seq. or other applicable statutes;

11 ~~(27)~~~~(28)~~ **"Office" means the Office of Broadband Development;**

12 ~~(28)~~ "Person" means any individual, firm, partnership, association, corporation, or
13 governmental agency;

14 (29) "Pollution" means the placing of any noxious or deleterious substances
15 ("pollutants"), including sewage and industrial wastes, in any waters of the state or
16 affecting the properties of any waters of the state in a manner which renders the
17 waters harmful or inimical to the public health or to animal or aquatic life, or to the
18 use, present or future, of these waters for domestic water supply, industrial or
19 agricultural purposes, or recreational purposes;

20 (30) "Prioritization schedules" means the list of wastewater treatment works, distribution
21 facilities and water resources projects which the Energy and Environment Cabinet
22 has evaluated and determined to be of priority for receiving financial assistance
23 from the federally assisted wastewater revolving fund and the federally assisted
24 drinking water revolving fund, or the list of infrastructure projects which the
25 authority has evaluated and determined to be of priority for receiving financial aid
26 from the infrastructure revolving fund. The evaluation by the authority of
27 infrastructure projects for water systems shall be undertaken with input from the

- 1 appropriate area development district;
- 2 (31) "Recovered material" means those materials which have known current use, reuse,
3 or recycling potential, which can be feasibly used, reused, or recycled, and which
4 have been diverted or removed from the solid waste stream for sale, use, reuse, or
5 recycling, whether or not requiring subsequent separation and processing but does
6 not include materials diverted or removed for purposes of energy recovery or
7 combustion except refuse-derived fuel (RDF), which shall be credited as a
8 recovered material in an amount equal to that percentage of the municipal solid
9 waste received on a daily basis at the processing facility and processed into RDF;
10 but not to exceed fifteen percent (15%) of the total amount of the municipal solid
11 waste received at the processing facility on a daily basis;
- 12 (32) "Recovered material processing facility" means a facility engaged solely in the
13 storage, processing, and resale or reuse of recovered material but does not mean a
14 solid waste facility if solid waste generated by a recovered material processing
15 facility is managed in accordance with KRS Chapter 224 and administrative
16 regulations adopted by the cabinet;
- 17 (33) "Revenue bonds" means special obligation bonds issued by the authority as
18 provided by the provisions of this chapter, which are not direct or general
19 obligations of the state, and which are payable only from a pledge of, and lien upon,
20 authority revenues as provided in the resolution authorizing the issuance of the
21 bonds, and shall include revenue bond anticipation notes;
- 22 (34) "Service charge" means any monthly, quarterly, semiannual, or annual charge to be
23 imposed by a governmental agency, or by the authority, for any infrastructure
24 project financed by the authority, which service charge arises by reason of the
25 existence of, and requirements of, any assistance agreement;
- 26 (35) "Sewage" means any of the waste products or excrements, or other discharges from
27 the bodies of human beings or animals, which pollute the waters of the state;

- 1 (36) "Shapefile" means a file format for storing, depicting, and analyzing geospatial data
2 showing broadband coverage;
- 3 (37) "Solid waste" means "solid waste" as defined by KRS 224.1-010(30)(a);
- 4 (38) "Solid waste facility" means any facility for collection, handling, storage,
5 transportation, transfer, processing, treatment, or disposal of solid waste, whether
6 the facility is associated with facilities generating the waste or otherwise, but does
7 not include a container located on property where the waste is generated and which
8 is used solely for the purpose of collection and temporary storage of that solid waste
9 prior to off-site disposal, or a recovered material processing facility;
- 10 (39) "Solid waste project" means construction, renovation, or acquisition of a solid waste
11 facility which shall be instituted and owned by a governmental agency;
- 12 (40) "Solid waste revolving fund" means that fund which shall receive state funds, the
13 proceeds from the sale of revenue bonds of the authority, or other moneys
14 earmarked for the purpose of providing loans or grants to finance solid waste
15 projects defined in this section;
- 16 (41) "State" means the Commonwealth of Kentucky;
- 17 (42) "System" means the system owned and operated by a governmental agency with
18 respect to solid waste projects, treatment works, or infrastructure projects financed
19 as provided by the assistance agreement between the governmental agency and the
20 authority;
- 21 (43) "Treatment works" or "wastewater treatment works" means all or any part of any
22 facilities, devices, and systems used and useful in the storage, treatment, recycling,
23 and reclamation of wastewater or the abatement of pollution, including facilities for
24 the treatment, neutralization, disposal of, stabilization, collecting, segregating, or
25 holding of wastewater, including without limiting the generality of the foregoing,
26 intercepting sewers, outfall sewers, pumping power stations, and other equipment
27 and their appurtenances; extensions, improvements, remodeling, additions, and

- 1 alterations thereof, and any wastewater treatment works, including site acquisition
2 of the land that will be an integral part of the wastewater treatment process, or is
3 used for ultimate disposal of residues resulting from wastewater treatment, together
4 with any other facilities which are deemed to be treatment works in accordance with
5 the federal act;
- 6 (44) "Underserved area" means any project area where~~[fixed, terrestrial]~~ broadband
7 service with a minimum ***one hundred (100)***~~[twenty five (25)]~~ megabits per second
8 downstream and ***twenty (20)***~~[three (3)]~~ megabits per second upstream is not
9 available;
- 10 (45) "Unserved area" means any project area where~~[fixed, terrestrial]~~ broadband service
11 with a minimum ***twenty-five (25)***~~[ten (10)]~~ megabits per second downstream and
12 ***three (3) megabits***~~[one (1) megabit]~~ per second upstream is not available;
- 13 (46) "Utility tax" means the tax which may be imposed by the authority on every
14 purchase of water or sewer service in the Commonwealth of Kentucky;
- 15 (47) "Variable rate revenue bonds" means revenue bonds the rate of interest on which
16 fluctuates either automatically by reference to a predetermined formula or index or
17 in accordance with the standards set forth in KRS 224A.120;
- 18 (48) "Wastewater" means any water or liquid substance containing sewage, industrial
19 waste, or other pollutants or contaminants derived from the prior use of these
20 waters;
- 21 (49) "Water resources" means all waters of the state occurring on the surface, in natural
22 or artificial channels, lakes, reservoirs, or impoundments, and in subsurface
23 aquifers, which are available, or which may be made available to agricultural,
24 industrial, commercial, recreational, public, and domestic users;
- 25 (50) "Water resources project" means any structural or nonstructural study, plan, design,
26 construction, development, improvement, or any other activity including programs
27 for management, intended to conserve and develop the water resources of the state

1 and shall include all aspects of water supply, facilities to collect, transport, and treat
2 wastewater as defined in KRS 65.8903, flood damage abatement, navigation, water-
3 related recreation, and land conservation facilities and measures; and

4 (51) "Waters of the state" means all streams, lakes, watercourses, waterways, ponds,
5 marshes, wells, springs, irrigation systems, drainage systems, and all other bodies or
6 accumulations of water, surface and underground, natural or artificial, which are
7 situated wholly or partly within, or border upon, this state, or are within its
8 jurisdiction, except those private waters which do not combine or effect a junction
9 with natural, surface, or underground waters.

10 ➔Section 3. KRS 224A.112 is amended to read as follows:

11 (1) The infrastructure revolving fund shall be established in the State Treasury and shall
12 be administered by the authority. The fund shall be a dedicated fund, and all moneys
13 in the fund shall be allocated and dedicated solely to providing financial assistance
14 to governmental agencies, and investor-owned water systems as provided for in
15 KRS 96.540, 224A.306, 224A.308, and 224A.310, for the construction or
16 acquisition of infrastructure projects through an account designated as the 2020
17 water service account.

18 (2) The broadband deployment fund shall be established in the State Treasury and shall
19 be administered by the ~~office~~^{authority}. The fund shall be a dedicated fund, and all
20 moneys in the fund shall be allocated and dedicated solely to providing grant funds
21 to governmental agencies and private sector entities to construct infrastructure for
22 the deployment of broadband service to households and businesses in underserved
23 or unserved areas of the Commonwealth through an account designated as the
24 broadband deployment fund.

25 (3) Funds in subsections (1) and (2) of this section shall not be commingled and shall
26 be used only for the stated purposes in subsections (1) and (2) of this section.

27 (4) The financial assistance which may be provided by the revolving fund shall be

- 1 limited to:
- 2 (a) Making loans, on the condition that the loans are made at or below market
3 interest rates, including interest free loans, at terms not to exceed thirty (30)
4 years and that the fund will be credited with all payments of principal and
5 interest on all loans;
- 6 (b) Purchasing or guaranteeing, or purchasing insurance for, local or state
7 obligations when the action would improve credit market access or reduce
8 interest rates;
- 9 (c) Providing a source of revenue or security for the payment of principal and
10 interest on bonds or notes issued by the authority or other agencies of the state
11 if the proceeds of the sale of the bonds will be deposited in the fund;
- 12 (d) Providing moneys with which to carry out the requirements of assistance
13 agreements; and
- 14 (e) Making grants as funds specifically appropriated for grants or proceeds from
15 the sale of the authority's revenue bonds are available.
- 16 (5) The revolving fund shall be established, maintained, and credited with repayments
17 and the fund balance shall be available in perpetuity for its stated purposes.
- 18 (6) The authority may provide financial assistance from the revolving fund to
19 supplement assistance provided from the federally assisted wastewater revolving
20 fund as created in KRS 224A.111.
- 21 (7) The authority shall advise governmental agencies of the availability of the
22 infrastructure revolving fund and how moneys may be obtained from the fund.
- 23 (8) The authority may enter into any necessary or required agreement with federal or
24 state agencies or persons to carry out the provisions of this section. All state
25 agencies shall cooperate with the authority and share information with the authority
26 as appropriate to accomplish the purposes set out in KRS 224A.300.
- 27 (9) Moneys in the broadband deployment fund are hereby appropriated for the

1 purposes set forth in this section and KRS 224A.1121.

2 (10) Notwithstanding KRS 45.229, any moneys remaining in the **broadband deployment**
 3 fund at the close of the fiscal year shall not lapse but shall be carried forward into
 4 the succeeding fiscal year to be used for the purposes set forth in this section and
 5 KRS 224A.1121.

6 (11) Interest earned on moneys in the broadband deployment fund shall stay in the fund.

7 ➔Section 4. KRS 224A.1121 is amended to read as follows:

8 (1) **(a)** The purpose of the broadband deployment fund set forth in KRS 224A.112
 9 shall be to:

10 **1.** Assist governmental agencies and private sector entities to construct
 11 infrastructure for the deployment of broadband service to underserved or
 12 unserved areas of the Commonwealth; **and**

13 **2. Provide supplemental funding for recipients of federal government**
 14 **awards specifically to support the deployment or expansion of**
 15 **broadband networks.**

16 **(b)** The **office**~~authority~~ shall manage the fund and may accept and receive
 17 appropriations from the General Assembly or other funds or gifts from both
 18 public and private sources, including but not limited to local governments and
 19 federal agencies.

20 (2) The **office**~~authority~~ shall establish a grant program that allocates funds from the
 21 broadband deployment fund in accordance with this section.

22 **(3) (a) The office shall issue grant applications for all projects awarded grant**
 23 **funds on or after April 5, 2022.**

24 **(b)** Grant funds may be used by government or private sector entities for
 25 broadband deployment projects.}

26 ~~(3) The grant program shall be developed to give highest funding priority to those~~
 27 ~~projects which most effectively provide broadband service to the greatest number of~~

1 ~~underserved and unserved Kentucky citizens and at the lowest cost. Funding shall~~
2 ~~not be used to duplicate broadband service to citizens, households, and businesses~~
3 ~~in a broadband deployment project area where fixed, terrestrial broadband service~~
4 ~~meets or exceeds twenty five (25) megabits per second downstream and three (3)~~
5 ~~megabits per second upstream.]~~

6 (4) The office~~[authority]~~ shall develop funding criteria and prioritization schedules for
7 broadband deployment projects~~[in a technology neutral manner]~~ in accordance
8 with this section.

9 (5) (a) The office~~[authority]~~ shall establish guidelines and standards for applying for
10 and approving grants from the broadband deployment fund **according to the**
11 **minimum requirements in this section. No additional requirement shall be**
12 **added which could delay broadband deployment.**

13 (b) An eligible applicant shall submit an application to the office~~[authority]~~.

14 (c) An application for a grant shall contain any information the office~~[authority]~~
15 requires, including but not limited to:

16 1.~~[(a)]~~ A shapefile~~[geographic description]~~ of the broadband deployment
17 project area **and a list of addresses in the broadband deployment**
18 **project area**~~[, including whether the area is partially served];~~

19 2.~~[(b)]~~ A description of the broadband deployment project, including
20 facilities, equipment, total cost, timeframe for completion, and network
21 capabilities, including minimum speed thresholds;

22 3.~~[(c)]~~ Documentation of the applicant's technical, financial, and
23 managerial resources and experience to build, operate, and manage
24 broadband **networks** serving citizens, households, and businesses in
25 Kentucky, **including a detailed project management plan identifying**
26 **staff, contractors, and key responsibilities;**

27 4.~~[(d)]~~ Documentation of the economic and commercial feasibility of the

1 proposed broadband deployment project, **including a detailed project**
 2 **budget and documentation of availability of supplies;**

3 ~~5.[(e)]~~ The number of **addresses within the broadband deployment**
 4 **project area**~~[citizens, households, or businesses]~~ that would have new
 5 access to broadband as a result of the grant;

6 ~~6.[(f)]~~ The amount of matching funds the eligible applicant will
 7 contribute and a certification that no portion of the matching funds is
 8 derived from any state or federal grant received for the purpose of
 9 funding broadband infrastructure within the project area; and

10 ~~7.[(g)]~~ A certification that none of the funds provided by the program for
 11 the project in the application will be used to extend or deploy facilities
 12 to any currently served **addresses**~~[citizens, households, or businesses].~~

13 (6) The ~~office~~~~[authority]~~ shall make **all information within each application**~~[the~~
 14 ~~applications]~~ available to the public within five (5) business days ~~following~~~~[of]~~ the
 15 deadline for submission of applications, provided the information contained within
 16 an application is not exempt from disclosure under the provisions of the Open
 17 Records Act, KRS 61.870 to 61.884. The description of the geographic scope of the
 18 broadband deployment project area shall not be exempt under the Open Records
 19 Act, KRS 61.870 to 61.884, and shall be made available to the public within five (5)
 20 days after submission of the application.

21 (7) **(a)** As part of the grant application process ~~under~~~~[, pursuant to]~~ subsection
 22 ~~(5)~~~~[(3)]~~ of this section, the ~~office~~~~[authority]~~ shall include an opportunity for a
 23 **challenging** broadband service provider to challenge ~~an~~~~[the]~~ application
 24 **within fifteen (15) business days of making all information available to the**
 25 **public under subsection (6) of this section.**

26 **(b) A challenging provider shall provide the office with proof that:**~~[As part of~~
 27 ~~the dispute process, the authority may consider any relevant geospatial data~~

1 available from a broadband service provider or grant applicant. Geospatial
 2 data may include but is not limited to shapefiles detailing broadband coverage,
 3 the most current Federal Communications Commission Form 477 fixed
 4 broadband deployment data reporting, or other documentation of broadband
 5 deployment infrastructure in the project area to show that a challenged project
 6 area is underserved or unserved. A challenging provider may provide the
 7 authority with proof, including but not limited to:]

8 1.[(a)] The broadband deployment project area is:

9 a. Currently served; or[is]

10 b. Under construction for provision of broadband service within
 11 twelve (12) months of the challenge; or

12 2.[(b)] The applicant has received funds from another state or federally
 13 funded grant program designed to encourage broadband deployment in
 14 the broadband deployment project area that covers more than fifty
 15 percent (50%) of the eligible project expenses.

16 (c) As part of the challenge process and in order to meet the burden of proof in
 17 paragraph (b) of this subsection, the challenging provider shall submit:

18 1. A shapefile and a list of addresses containing all addresses within the
 19 broadband deployment project area that the challenging broadband
 20 service provider currently serves and the maximum megabits per
 21 second downstream speed and the maximum megabits per second
 22 upstream speed provided to each challenged address;

23 2. A feasibility study, construction plan, or other relevant documentation
 24 that clearly and convincingly demonstrates that the challenging
 25 broadband service provider will be under construction within twelve
 26 (12) months of the application date for the broadband deployment
 27 fund grant, which may be extended by the office an additional six (6)

1 months because of undue construction delays; or
2 3. Loan documents, grant award receipts, or other financial information
3 that clearly and convincingly demonstrates to the office that the
4 challenging broadband service provider has received adequate funds
5 from another state or federally funded grant program designed to
6 encourage broadband deployment in the area.

7 (d) Within five (5) business days of a challenge being submitted to the office,
8 the provider submitting the application which is challenged shall be
9 provided copies of all challenge material.

10 (e) The office shall treat any information submitted as part of a challenge as
11 confidential and exempt from disclosure under the Open Records Act, KRS
12 61.870 to 61.884, upon the challenging provider's request for confidential
13 treatment.

14 (f) Within fifteen (15) business days of receipt of the copies under paragraph
15 (d) of this subsection, the applicant shall respond to the challenge.

16 (g) Once the response to the challenge is submitted to the office by the
17 applicant, the office shall have fifteen (15) business days to resolve the
18 dispute.

19 (h) Upon a determination that a challenge is unsuccessful because the
20 challenging provider is unable to prove, within the timeframe provided
21 under this section, that the provider currently serves a broadband
22 deployment project area, the office shall move forward with the funding
23 process provided in this section.

24 (8) (a) Upon a determination that an application meets the funding criteria, but the
25 proposed project area is found to be partially served, the applicant^[authority]
26 may amend and resubmit the application within fifteen (15) business days
27 and the office may grant partial funding based on the partial service provided

1 in order to ensure that grant funds are used to only provide broadband service
2 to addresses~~[citizens, households, or businesses]~~ deemed underserved or
3 unserved.

4 **(b) In the event of a challenge that involves subsection (7)(c)2. of this section**
5 **and those addresses are not under construction within twelve (12) months,**
6 **or eighteen (18) months if extended by the office, the challenging provider**
7 **shall pay a civil penalty to the broadband deployment fund in an amount**
8 **equal to the amount of grant funding for those addresses plus ten percent**
9 **(10%).**

10 **(9) When awarding grant funds, the office shall award funding to addresses with no**
11 **service first, then to addresses that are unserved, and then lastly to addresses that**
12 **are underserved. The office shall:**

13 **(a) Score the unserved and underserved grant applications based on the**
14 **following criteria, giving priority consideration in the order listed:**

15 **1. Projects in unserved and underserved areas that reach the customers**
16 **that are the least economical to serve, in the following order;**

17 **a. Projects that average zero to five (5) locations per route mile;**

18 **b. Projects that average five (5) to ten (10) locations per route mile;**

19 **and**

20 **c. Projects that average eleven (11) locations or more per route**
21 **mile;**

22 **2. Projects in unserved and underserved areas where local, state, or**
23 **federal funds are not available;**

24 **3. Fiber-to-the-premise projects that will deploy broadband services with**
25 **a capacity to transmit data from or to the Internet with symmetrical**
26 **downstream and upstream speeds of at least one (1) gigabit;**

27 **4. Projects deploying infrastructure capable of achieving symmetrical**

1 speeds at a minimum of one hundred (100) megabits per second
2 download and upload speeds;

3 5. The size and the scope of the unserved and underserved area proposed
4 to be served;

5 6. The technical, managerial, and financial capabilities of the applicant,
6 demonstrating the ability to successfully deploy the proposed project
7 and provide broadband service;

8 7. A project requesting less than fifty percent (50%) funding from the
9 requested grant;

10 8. Projects that will be eligible for the Affordable Connectivity Program
11 for low-income consumers administered by the Federal
12 Communications Commission; and

13 9. Projects that plan to encourage adoption of broadband services,
14 including community outreach to promote adoption, technical
15 support, and training on how to connect;

16 (b) Award no more than fifty percent (50%) of the total project cost, unless the
17 project meets the following density requirements:

18 1. Projects that average zero to five (5) locations per route mile, which
19 may be eligible for reimbursement of up to seventy percent (70%) of
20 the cost of the project;

21 2. Projects that average five (5) to ten (10) locations per route mile,
22 which may be eligible for reimbursement of up to sixty percent (60%)
23 of the cost of the project; and

24 3. Projects that average eleven (11) locations or more per route mile,
25 which may be eligible for reimbursement of fifty percent (50%) of the
26 cost of the project;

27 (c) Require the remaining project costs to be paid by matching funds from:

- 1 1. A private source, including but not limited to financial institutions
2 that serve distribution cooperatives;
- 3 2. A city, county, urban-county government, or consolidated local
4 government; or
- 5 3. Any combination of matching moneys provided under subparagraphs
6 1. and 2. of this paragraph;
- 7 (d) Allow eligible project expenses, including those that are incurred starting
8 on or after the date in the written acknowledgement of acceptance issued
9 under paragraph (f) of this subsection and ending at the conclusion of the
10 grant project, or grant project contractual term, whichever is earlier, and
11 may include:
- 12 1. Project engineering or design plans;
13 2. Permitting;
14 3. Pre-construction costs to make ready the project site;
15 4. Outside plant materials, including fiber; poles, hardware, conduit or
16 splitters;
17 5. Labor, construction management, and equipment; and
18 6. Installation and testing of the broadband services;
- 19 (e) Make a determination that an application meets the funding criteria, unless
20 the proposed project area is found to be partially served, in which case the
21 application may be amended and partial funding based on the partial
22 service provided may be granted; and
- 23 (f) 1. Issue within sixty (60) days of receipt of an application for grant
24 funds, except in the case of a challenged application under the
25 timeline in subsection (7) of this section, a written acknowledgement
26 of either:
- 27 a. Acceptance;

- 1 **b. Denial and any reasons for denial of the application; or**
 2 **c. A request for additional information to process the application**
 3 **listing the specific information required; and**
 4 **2. Issue grant funds to the applicant by the fifteenth day of the month, or**
 5 **the next business day if the fifteenth day falls on a weekend day or**
 6 **state or federal holiday, when a complete requisition of funds packet is**
 7 **received prior to the fifth day of the month.**

8 **(10) The office shall not reimburse applicants for special construction charges,**
 9 **including fees or charges imposed upon the end user as a condition of receiving**
 10 **broadband service at an address.**

11 **(11) The office may provide an incentive for timely completion or a disincentive for**
 12 **not meeting agreed upon timeframes.**

13 **(12) Grant funds awarded to an applicant to supplement the applicant's federal fund**
 14 **award may not be used for costs that will be reimbursed by the other federal**
 15 **funds.**

16 **(13) No funds shall be used:**

17 **(a)** To support any broadband deployment project involving the upgrade of an
 18 existing facility **already delivering broadband services, including an**
 19 **upgrade of existing wireline, or terrestrial infrastructure capable of**
 20 **delivering services greater than twenty-five (25) megabits per second**
 21 **downstream and three (3) megabits per second upstream;** or

22 **(b)** For non-capital expenses, non-broadband services, marketing, or advertising.
 23 ~~[The broadband deployment project area shall be described by census block~~
 24 ~~including the specific addresses to be serviced or by shapefile geospatial data.~~

25 ~~(10) Grant applicants shall pay a minimum of fifty percent (50%) of the project cost~~
 26 ~~which shall not include any matching funds received from federal or state~~
 27 ~~government grants for broadband deployment in the project area.]~~

1 ~~(14)~~~~(11)~~ Moneys in this fund shall not be used by or transferred to the Kentucky
2 Communications Network Authority.

3 ~~(15)~~ ~~(a)~~~~(12)~~ To carry out the purposes of this section, the *office may*~~authority shall~~
4 promulgate administration regulations *under*~~in accordance with~~ KRS
5 Chapter 13A. ~~Within one hundred eighty (180) days of July 15, 2020, the~~
6 ~~authority shall promulgate regulations to implement the provisions of this~~
7 ~~section and KRS 224A.011, 224A.110, and 224A.112 and govern the~~
8 ~~submission, review, and approval of applications and the administration of~~
9 ~~broadband deployment projects.]~~

10 ~~(b)~~ The *office*~~authority~~ shall not promulgate any regulations that place
11 obligations on the applicants that are more restrictive than applicable federal
12 or state law. ~~Except as otherwise provided in this section, all of the~~
13 ~~authority's records relating to the broadband deployment fund shall be deemed~~
14 ~~confidential unless disclosure is required under the provisions of the Open~~
15 ~~Records Act, KRS 61.870 to 61.884.]~~

16 ~~(c)~~ *In the event that any state law or administrative regulation affecting the*
17 *broadband deployment fund conflicts with any federal law or regulation*
18 *related to federal broadband funding, the federal law or regulation shall*
19 *govern. The office may adopt state and local program requirements to*
20 *comply with all federal laws and regulation related to federal broadband*
21 *funding.*

22 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO
23 READ AS FOLLOWS:

24 *(1) The General Assembly hereby finds and declares that:*

25 *(a) A rural infrastructure improvement fund, and a program to administer the*
26 *fund, is necessary to further the Commonwealth's goal to expand and*
27 *accelerate access to broadband service throughout the entire*

1 Commonwealth; and

2 (b) Supporting the replacement of utility poles will provide benefits to Kentucky
3 residents by:

4 1. Facilitating the construction of broadband networks;

5 2. Minimizing the potential for disputes between broadband providers
6 and utility pole owners that could otherwise delay deployment;

7 3. Improving the resiliency and longevity of broadband infrastructure;
8 and

9 4. Addressing needs for broadband investment not yet fully met by
10 existing programs.

11 (2) As used in this section:

12 (a) "Application" means an application made under subsection (4) of this
13 section for eligible pole replacement costs;

14 (b) "Eligible pole replacement":

15 1. Means the removal of an existing utility pole and replacement with a
16 new utility pole in an unserved area in order to accommodate the
17 attachment of facilities to be used, in whole or in part, by a retail
18 provider to provide qualifying broadband service access to residences
19 or businesses within an unserved area; and

20 2. Does not include the removal and replacement of a utility pole in
21 order to accommodate facilities used only for the provision of
22 wholesale broadband or data transport service, where the owner of the
23 facilities, or its affiliate, does not use the facilities to provide
24 qualifying broadband services directly to residences or businesses;

25 (c) "Eligible pole replacement costs":

26 1. Means:

27 a. The actual and reasonable costs paid or incurred to perform an

1 eligible pole replacement;

2 b. The amounts of any expenditures to remove and dispose of the
3 existing utility pole, to purchase and install a replacement utility
4 pole, or to transfer any existing facilities to the new pole; and

5 c. The costs of reimbursing another party for the costs of
6 performing an eligible pole replacement, when paid or incurred
7 by the person responsible for the costs; and

8 2. Does not include:

9 a. Costs paid or incurred to perform an eligible pole replacement by
10 a party who is not responsible for those costs, and which are
11 charged or passed along to the responsible party;

12 b. Costs for which the party incurring or paying the costs
13 separately has received or is entitled to receive reimbursement
14 under the terms of a state or federal grant program for the
15 deployment of broadband facilities; and

16 c. The receipt of a state or federal grant where the pole
17 replacement costs, for which reimbursement is requested, exceed
18 the pole replacement costs that were reasonably anticipated at
19 the time of, or on which the amount of, the other support
20 funding was predicated.

21 Costs are considered separately reimbursed for purposes of this paragraph
22 if the amount of an award under another state or federal broadband
23 program included consideration, by the awarding entity, of the pole
24 replacement costs by the applicant;

25 (d) "Fund" means the rural infrastructure improvement fund established by
26 subsection (3) of this section;

27 (e) "Pole owner" means any person or entity that owns or controls a utility

1 pole;

2 (f) "Program" means the Kentucky Rural Infrastructure Improvement
3 Program established by subsection (4) of this section;

4 (g) "Qualifying broadband service" means a retail wireline broadband service
5 capable of delivering Internet access at speeds of at least one hundred (100)
6 megabits per second in both the downstream and upstream directions, and
7 with latency at a level sufficient to permit real-time, interactive applications;
8 and

9 (h) "Utility pole" means any pole used, in whole or in part, for any wire
10 communications or electric distribution, regardless of the owner or operator
11 of the pole.

12 (3) (a) There is created within the State Treasury a trust and agency account to be
13 known as the rural infrastructure improvement fund, consisting of moneys
14 appropriated by the General Assembly, federal funds, grants, and gifts.

15 (b) The fund shall be administered by the Office of Broadband Development
16 and all money deposited in the fund shall be used:

17 1. By the office to provide reimbursements to qualified applicants under
18 the Rural Infrastructure Improvement Program established under
19 subsection (4) of this section;

20 2. For the purposes of covering the costs of program administration and
21 operation; and

22 3. In a manner consistent with federal law.

23 (c) Notwithstanding KRS 45.229, any moneys remaining in the fund at the
24 close of the fiscal year shall not lapse but shall be carried forward into the
25 succeeding fiscal year to be used for the purposes set forth in this section.

26 (d) Interest earned on money deposited to the credit of the fund shall be
27 retained in the fund and shall not lapse.

1 (e) Moneys deposited in the fund are hereby appropriated for the purposes in
2 this section.

3 (4) (a) There is hereby established the Kentucky Rural Infrastructure Improvement
4 Program for the purpose of expediting and facilitating the deployment of
5 broadband service to individuals, businesses, agricultural operations, and
6 community access points in unserved areas by reimbursing a portion of
7 eligible pole replacement costs incurred by eligible applicants.

8 (b) The office shall administer and provide staff assistance for the program and
9 shall be responsible for receiving, reviewing, and approving applications for
10 pole reimbursements.

11 (c) The office shall award pole reimbursements from moneys in the fund
12 created by subsection (3) of this section until all moneys in the fund are
13 exhausted.

14 (d) No later than September 1, 2022, the office shall:

15 1. Promulgate administrative regulations under KRS Chapter 13A
16 necessary for the administration of this section;

17 2. Publish an application for pole replacement reimbursements that shall
18 require:

19 a. Information sufficient to establish the number, cost, and
20 eligibility of eligible pole replacements that qualify for
21 reimbursement;

22 b. Documentation sufficient to establish that the claimed eligible
23 pole replacements have been completed, including receipts
24 verifying the amount of eligible pole replacement costs paid by
25 the applicant;

26 c. The amount of program reimbursement requested in the
27 application and any grant funding or accounting information

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required to justify the amount of the request;

d. i. A statement that the costs for which reimbursement is requested have not been reimbursed through any other state or federal broadband grant program.

ii. If the applicant is a recipient of funding from another program, the statement shall include an explanation of how the costs for which reimbursement is requested exceed the pole replacement costs on which the original award was predicated or that were reasonably anticipated at the time of the original award;

e. A notarized statement from an officer or agent of the applicant that the contents of the application are true and accurate and that the applicant accepts the requirements of this section and any promulgated administrative regulations as a condition of receiving an award of program reimbursement; and

f. Any other information necessary for the office to comply with any conditions on federal funding used in connection with the program; and

3. Publish and maintain on its Web site:

a. Statistics on the number of applications received, processed, and rejected by the office under the pole replacement program;

b. Statistics on the size, number, and status of reimbursements awarded by the office under the pole replacement program, including the pole owners and broadband providers receiving reimbursements; and

c. The amount of money remaining in the fund.

(e) An applicant who incurs or pays the costs of an eligible pole replacement to

1 accommodate broadband facilities consistent with this section may apply to
2 the office for reimbursement.

3 (f) As a condition of receiving reimbursement under this subsection, an
4 applicant shall:

5 1. Certify its compliance with the requirements of this section;

6 2. Agree to comply with any requirements that the office determines to be
7 necessary conditions on federal funding used in connection with the
8 program;

9 3. Agree to refund, with interest at the applicable federal funds rate as
10 specified by KRS 355.4A-506, to the fund, any reimbursements or
11 portions of reimbursements received from the fund under this
12 subsection, if the office finds, upon substantial evidence and after
13 notice and opportunity to respond, that the recipient materially
14 violated any of the requirements agreed to under this section;

15 4. Agree that no funds awarded by the program will be used to meet any
16 cash match requirement under any other broadband program
17 administered by the Commonwealth or one (1) of its subdivisions;

18 5. Agree to submit reports as the office may require regarding broadband
19 deployment facilitated by the program, which may include reports
20 demonstrating that an application that has received a federally funded
21 award is meeting or exceeding buildout requirements contained in
22 that award; and

23 6. Agree to not include in any rates or fees charged for its services any
24 eligible pole replacement costs that were reimbursed by the program,
25 paid for by a broadband provider, or funded by another grant source.

26 (g) 1. If the necessary information is not otherwise reasonably available to
27 the applicant, the applicant may request a pole owner performing an

- 1 eligible pole replacement to provide the number and costs of the pole
2 replacements, receipts verifying the amount of pole replacement costs
3 paid by the applicant, and confirmation that the pole replacement
4 costs were incurred to accommodate the applicant's attachment and
5 not due to some other reason.
- 6 2. In the event the office requires additional information from an
7 applicant following the submission of an application to confirm the
8 eligibility of costs in an application that is in the possession of the pole
9 owner and not otherwise reasonably available to the applicant, the
10 applicant may also request that the pole owner assist with providing
11 the information as requested by the office.
- 12 3. A pole owner shall coordinate in good faith to provide the information
13 to the applicant, and may require reimbursement from the broadband
14 provider of its actual and reasonable administrative expenses in
15 connection with the coordination, which shall not exceed five percent
16 (5%) of the eligible pole replacement costs.
- 17 4. Administrative costs that a broadband provider reimburses to a pole
18 owner under this subsection are not eligible for reimbursement from
19 the fund as eligible pole replacement costs.
- 20 (h) Within sixty (60) days of receipt of a completed application establishing the
21 eligibility of costs for reimbursement, and to the extent that moneys are
22 available in the fund, the office shall award the lesser of:
- 23 1. Five thousand dollars (\$5,000) for each pole replaced; or
24 2. Fifty percent (50%) of the total amount incurred or paid by the
25 applicant for eligible pole replacement costs.
- 26 (i) Any application pending at the exhaustion of the moneys in the fund shall
27 be deemed denied but may be refiled if sufficient moneys are later made

1 available in the fund.

2 (j) No later than one (1) year after the fund receives moneys for the purpose of
 3 providing pole replacement reimbursements to qualified applicants, the
 4 authority shall, on an annual basis, cause to be conducted an independent
 5 audit of the office's administration of the fund for compliance with the
 6 requirements of this section. This audit may be performed by either the
 7 Auditor of Public Accounts or a certified public accountant in conjunction
 8 with the annual audit of the authority. The authority shall comply with the
 9 provisions of KRS 45.149 before entering into a contract for audit services
 10 with a certified public accountant.

11 (5) A broadband provider's use of funds reimbursed under this subsection to pay
 12 eligible pole replacement costs shall have no effect on the subsequent ownership
 13 of any replacement pole purchases and installed by a pole owner using the funds.

14 ➔Section 6. KRS 278.5461 is amended to read as follows:

15 In addition to the definitions in KRS 278.010 and KRS 278.516(2), for KRS 278.546 to
 16 278.5462, ~~the following definitions shall apply:~~

17 ~~(1) "Broadband" means any service that is used to deliver video or to provide access to~~
 18 ~~the Internet and that consists of the offering of the capability to transmit information~~
 19 ~~at a rate that is generally not less than two hundred (200) kilobits per second in at~~
 20 ~~least one direction; or any service that combines computer processing, information~~
 21 ~~storage, and protocol conversion to enable users to access Internet content and~~
 22 ~~services. Nothing in this definition shall be construed to include any intrastate~~
 23 ~~service, other than digital subscriber line service, tariffed at the commission as of~~
 24 ~~July 15, 2004.~~

25 ~~(2) "local exchange carrier" means any company certified by the commission to~~
 26 ~~provide local exchange telecommunications service in the Commonwealth on or~~
 27 ~~before June 30, 1995.~~

1 ➔Section 7. KRS 278.5464 is amended to read as follows:

2 (1) The General Assembly recognizes and declares:

3 (a) The provision of broadband service to residential, commercial, and industrial
4 customers is critical to securing a sound economy and promoting the general
5 welfare of the Commonwealth; and

6 (b) Distribution cooperatives are able to access and leverage federal funding to
7 extend and enhance the availability of broadband service to Kentucky
8 residents who are currently unserved or underserved.

9 (2) As used in this section:

10 (a) ~~"Broadband" means any wireline, fixed wireless, or fixed terrestrial~~
11 ~~technology having a capacity to transmit data from or to the Internet with a~~
12 ~~minimum speed of twenty five (25) megabits per second downstream and~~
13 ~~three (3) megabits per second upstream as defined by the Federal~~
14 ~~Communications Commission or the United States Department of Agriculture~~
15 ~~and any amendments to those definitions. If the agencies use different speed~~
16 ~~definitions, the faster speed definition shall apply;~~

17 (b) "Underserved area" ***has the same meaning as in Section 2 of this Act*** ~~means~~
18 ~~any project area where broadband service with a minimum twenty five (25)~~
19 ~~megabits per second downstream and three (3) megabits per second upstream~~
20 ~~is not available]; and~~

21 (c) "Unserved area" ***has the same meaning as in Section 2 of this***
22 ~~***Act***~~ ~~means any project area where broadband service with a minimum ten (10)~~
23 ~~megabits per second downstream and one (1) megabit per second upstream is~~
24 ~~not available].~~

25 (3) Notwithstanding any other statute to the contrary, ~~;~~

26 ~~(a)~~ a distribution cooperative may facilitate the operation of an affiliate engaged
27 exclusively in the provision of broadband service to unserved or underserved

1 households and businesses by:

2 ~~(a){1-}~~ **Constructing and** leasing excess capacity on any fiber optic cable **for**
 3 **broadband service which shall not require a certificate of public**
 4 **convenience and necessity under KRS 278.020; however, the construction**
 5 **of fiber optic cable** used to support the distribution cooperative's **electric**
 6 distribution system **shall require a certificate of public convenience and**
 7 **necessity under KRS 278.020;**

8 ~~(b){2-}~~ Issuing securities or evidences of indebtedness in an amount not to
 9 exceed twenty-five percent (25%) of the net book value of its assets, the
 10 proceeds of which shall be used for the exclusive purpose of capitalizing the
 11 affiliate; or

12 ~~(c){3-}~~ Pledging up to twenty-five percent (25%) of the net book value of its
 13 assets as collateral for a loan entered into by the affiliate for the purpose of
 14 providing broadband services[; and

15 ~~(b)~~ ~~The commission shall grant approval of the leasing of excess capacity, the~~
 16 ~~issuing of securities or evidences of indebtedness, or the pledging of assets~~
 17 ~~upon a finding the proposal is in the public interest.~~

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

21 ~~(a)~~ ~~The proposed investment will result in wasteful duplication of investment in~~
 22 ~~the case of any distribution cooperative's application for a certificate of public~~
 23 ~~convenience and necessity under KRS 278.020 that includes the construction~~
 24 ~~of a fiber optic cable system with capacity in excess of that which is necessary~~
 25 ~~to support the distribution cooperative's system under subsection (3)(a)1. of~~
 26 ~~this section; and~~

27 ~~(b)~~ ~~The issuance or assumption of securities or evidence of indebtedness satisfies~~

1 the criteria of ~~KRS 278.300(3)~~ in the case of any distribution cooperative's
2 application for approval of an issuance of securities or evidence of
3 indebtedness or pledge of assets under subsection ~~(3)(a)2. and 3.~~ of this
4 section].

5 ~~(4)~~~~(5)~~ A distribution cooperative shall comply with the cost allocation requirements
6 of:

7 (a) KRS 278.2201, 278.2203, 278.2205, 278.2207, 278.2209, and 278.2211; and

8 (b) Only KRS 278.2213(1) and (3) with regard to any costs associated with its
9 facilitation of an affiliate's provision of broadband services.

10 ~~(5)~~~~(6)~~ [~~Prior to December 31, 2021,~~]The commission shall promulgate
11 administrative regulations regarding pole attachments under the commission's
12 jurisdiction, including those necessary for the provision of broadband service.

13 **(6) Before broadband services may be offered under this section, a distribution**
14 **cooperative shall, by resolution of the board of directors and spread upon its**
15 **minutes, have an economic feasibility study conducted. The feasibility study shall**
16 **be provided to the commission and made available to distribution cooperative**
17 **members upon request.**

18 **(7) A distribution cooperative shall not allow the installation or operation of a**
19 **broadband system on its electric delivery system by an affiliate or other**
20 **broadband operator to diminish the reliability of the electric delivery system.**

21 **(8) A distribution cooperative shall not require any person to purchase broadband**
22 **services from an affiliate or other broadband operator as a condition of receiving**
23 **or continuing to receive electric energy from the distribution cooperative.**

24 **(9) A distribution cooperative shall not disconnect or threaten to disconnect its**
25 **electric service to any customer due to the customer's failure to pay for**
26 **broadband services provided to the customer by an affiliate or other broadband**
27 **operator.**

1 **(10) Every distribution cooperative shall conduct an annual audit of compliance with**
 2 **this section, which shall be provided to the commission and made available to**
 3 **distribution cooperative members upon request.**

4 **(11) The commission shall have no jurisdiction over the creation or operation of an**
 5 **distribution cooperative's broadband affiliate, except as referred to in subsection**
 6 **(4) of this section.**

7 ➔Section 8. KRS 139.010 is amended to read as follows:

8 As used in this chapter, unless the context otherwise provides:

9 (1) (a) "Admissions" means the fees paid for:

- 10 1. The right of entrance to a display, program, sporting event, music
 11 concert, performance, play, show, movie, exhibit, fair, or other
 12 entertainment or amusement event or venue; and
- 13 2. The privilege of using facilities or participating in an event or activity,
 14 including but not limited to:
- 15 a. Bowling centers;
 16 b. Skating rinks;
 17 c. Health spas;
 18 d. Swimming pools;
 19 e. Tennis courts;
 20 f. Weight training facilities;
 21 g. Fitness and recreational sports centers; and
 22 h. Golf courses, both public and private;
- 23 regardless of whether the fee paid is per use or in any other form,
 24 including but not limited to an initiation fee, monthly fee, membership
 25 fee, or combination thereof.

26 (b) "Admissions" does not include:

- 27 1. Any fee paid to enter or participate in a fishing tournament; or

- 1 2. Any fee paid for the use of a boat ramp for the purpose of allowing boats
2 to be launched into or hauled out from the water;
- 3 (2) "Advertising and promotional direct mail" means direct mail the primary purpose of
4 which is to attract public attention to a product, person, business, or organization, or
5 to attempt to sell, popularize, or secure financial support for a product, person,
6 business, or organization. As used in this definition, "product" means tangible
7 personal property, an item transferred electronically, or a service;
- 8 (3) "Business" includes any activity engaged in by any person or caused to be engaged
9 in by that person with the object of gain, benefit, or advantage, either direct or
10 indirect;
- 11 (4) "Commonwealth" means the Commonwealth of Kentucky;
- 12 (5) "Department" means the Department of Revenue;
- 13 (6) (a) "Digital audio-visual works" means a series of related images which, when
14 shown in succession, impart an impression of motion, with accompanying
15 sounds, if any.
- 16 (b) "Digital audio-visual works" includes movies, motion pictures, musical
17 videos, news and entertainment programs, and live events.
- 18 (c) "Digital audio-visual works" shall not include video greeting cards, video
19 games, and electronic games;
- 20 (7) (a) "Digital audio works" means works that result from the fixation of a series of
21 musical, spoken, or other sounds.
- 22 (b) "Digital audio works" includes ringtones, recorded or live songs, music,
23 readings of books or other written materials, speeches, or other sound
24 recordings.
- 25 (c) "Digital audio works" shall not include audio greeting cards sent by electronic
26 mail;
- 27 (8) (a) "Digital books" means works that are generally recognized in the ordinary and

1 usual sense as books, including any literary work expressed in words,
2 numbers, or other verbal or numerical symbols or indicia if the literary work is
3 generally recognized in the ordinary or usual sense as a book.

4 (b) "Digital books" shall not include digital audio-visual works, digital audio
5 works, periodicals, magazines, newspapers, or other news or information
6 products, chat rooms, or Web logs;

7 (9) (a) "Digital code" means a code which provides a purchaser with a right to obtain
8 one (1) or more types of digital property. A "digital code" may be obtained by
9 any means, including electronic mail messaging or by tangible means,
10 regardless of the code's designation as a song code, video code, or book code.

11 (b) "Digital code" shall not include a code that represents:

- 12 1. A stored monetary value that is deducted from a total as it is used by the
13 purchaser; or
- 14 2. A redeemable card, gift card, or gift certificate that entitles the holder to
15 select specific types of digital property;

16 (10) (a) "Digital property" means any of the following which is transferred
17 electronically:

- 18 1. Digital audio works;
- 19 2. Digital books;
- 20 3. Finished artwork;
- 21 4. Digital photographs;
- 22 5. Periodicals;
- 23 6. Newspapers;
- 24 7. Magazines;
- 25 8. Video greeting cards;
- 26 9. Audio greeting cards;
- 27 10. Video games;

1 11. Electronic games; or

2 12. Any digital code related to this property.

3 (b) "Digital property" shall not include digital audio-visual works or satellite
4 radio programming;

5 (11) (a) "Direct mail" means printed material delivered or distributed by United States
6 mail or other delivery service to a mass audience or to addressees on a mailing
7 list provided by the purchaser or at the direction of the purchaser when the
8 cost of the items are not billed directly to the recipient.

9 (b) "Direct mail" includes tangible personal property supplied directly or
10 indirectly by the purchaser to the direct mail retailer for inclusion in the
11 package containing the printed material.

12 (c) "Direct mail" does not include multiple items of printed material delivered to
13 a single address;

14 (12) "Directly used in the manufacturing or industrial processing process" means the
15 process that commences with the movement of raw materials from storage into a
16 continuous, unbroken, integrated process and ends when the finished product is
17 packaged and ready for sale;

18 (13) (a) "Extended warranty services" means services provided through a service
19 contract agreement between the contract provider and the purchaser where the
20 purchaser agrees to pay compensation for the contract and the provider agrees
21 to repair, replace, support, or maintain tangible personal property or digital
22 property according to the terms of the contract if:

23 1. The service contract agreement is sold or purchased on or after July 1,
24 2018; and

25 2. The tangible personal property or digital property for which the service
26 contract agreement is provided is subject to tax under this chapter or
27 under KRS 138.460.

1 (b) "Extended warranty services" does not include the sale of a service contract
2 agreement for tangible personal property to be used by a small telephone
3 utility as defined in KRS 278.516 or a Tier III CMRS provider as defined in
4 KRS 65.7621 to deliver communications services as defined in KRS 136.602
5 or broadband~~[as defined in KRS 278.5461]~~;

6 (14) (a) "Finished artwork" means final art that is used for actual reproduction by
7 photomechanical or other processes or for display purposes.

8 (b) "Finished artwork" includes:

- 9 1. Assemblies;
- 10 2. Charts;
- 11 3. Designs;
- 12 4. Drawings;
- 13 5. Graphs;
- 14 6. Illustrative materials;
- 15 7. Lettering;
- 16 8. Mechanicals;
- 17 9. Paintings; and
- 18 10. Paste-ups;

19 (15) (a) "Gross receipts" and "sales price" mean the total amount or consideration,
20 including cash, credit, property, and services, for which tangible personal
21 property, digital property, or services are sold, leased, or rented, valued in
22 money, whether received in money or otherwise, without any deduction for
23 any of the following:

- 24 1. The retailer's cost of the tangible personal property, digital property, or
25 services sold;
- 26 2. The cost of the materials used, labor or service cost, interest, losses, all
27 costs of transportation to the retailer, all taxes imposed on the retailer, or

- 1 any other expense of the retailer;
- 2 3. Charges by the retailer for any services necessary to complete the sale;
- 3 4. Delivery charges, which are defined as charges by the retailer for the
- 4 preparation and delivery to a location designated by the purchaser
- 5 including transportation, shipping, postage, handling, crating, and
- 6 packing;
- 7 5. Any amount for which credit is given to the purchaser by the retailer,
- 8 other than credit for tangible personal property or digital property traded
- 9 when the tangible personal property or digital property traded is of like
- 10 kind and character to the property purchased and the property traded is
- 11 held by the retailer for resale; and
- 12 6. The amount charged for labor or services rendered in installing or
- 13 applying the tangible personal property, digital property, or service sold.
- 14 (b) "Gross receipts" and "sales price" shall include consideration received by the
- 15 retailer from a third party if:
- 16 1. The retailer actually receives consideration from a third party and the
- 17 consideration is directly related to a price reduction or discount on the
- 18 sale to the purchaser;
- 19 2. The retailer has an obligation to pass the price reduction or discount
- 20 through to the purchaser;
- 21 3. The amount of consideration attributable to the sale is fixed and
- 22 determinable by the retailer at the time of the sale of the item to the
- 23 purchaser; and
- 24 4. One (1) of the following criteria is met:
- 25 a. The purchaser presents a coupon, certificate, or other
- 26 documentation to the retailer to claim a price reduction or discount
- 27 where the coupon, certificate, or documentation is authorized,

1 distributed, or granted by a third party with the understanding that
2 the third party will reimburse any seller to whom the coupon,
3 certificate, or documentation is presented;

4 b. The price reduction or discount is identified as a third-party price
5 reduction or discount on the invoice received by the purchaser or
6 on a coupon, certificate, or other documentation presented by the
7 purchaser; or

8 c. The purchaser identifies himself or herself to the retailer as a
9 member of a group or organization entitled to a price reduction or
10 discount. A "preferred customer" card that is available to any
11 patron does not constitute membership in such a group.

12 (c) "Gross receipts" and "sales price" shall not include:

13 1. Discounts, including cash, term, or coupons that are not reimbursed by a
14 third party and that are allowed by a retailer and taken by a purchaser on
15 a sale;

16 2. Interest, financing, and carrying charges from credit extended on the sale
17 of tangible personal property, digital property, or services, if the amount
18 is separately stated on the invoice, bill of sale, or similar document given
19 to the purchaser;

20 3. Any taxes legally imposed directly on the purchaser that are separately
21 stated on the invoice, bill of sale, or similar document given to the
22 purchaser; or

23 4. Local alcohol regulatory license fees authorized under KRS 243.075 that
24 are separately stated on the invoice, bill of sale, or similar document
25 given to the purchaser.

26 (d) As used in this subsection, "third party" means a person other than the
27 purchaser;

- 1 (16) "In this state" or "in the state" means within the exterior limits of the
2 Commonwealth and includes all territory within these limits owned by or ceded to
3 the United States of America;
- 4 (17) "Industrial processing" includes:
- 5 (a) Refining;
 - 6 (b) Extraction of minerals, ores, coal, clay, stone, petroleum, or natural gas;
 - 7 (c) Mining, quarrying, fabricating, and industrial assembling;
 - 8 (d) The processing and packaging of raw materials, in-process materials, and
9 finished products; and
 - 10 (e) The processing and packaging of farm and dairy products for sale;
- 11 (18) (a) "Lease or rental" means any transfer of possession or control of tangible
12 personal property for a fixed or indeterminate term for consideration. A lease
13 or rental shall include future options to:
- 14 1. Purchase the property; or
 - 15 2. Extend the terms of the agreement and agreements covering trailers
16 where the amount of consideration may be increased or decreased by
17 reference to the amount realized upon sale or disposition of the property
18 as defined in 26 U.S.C. sec. 7701(h)(1).
- 19 (b) "Lease or rental" shall not include:
- 20 1. A transfer of possession or control of property under a security
21 agreement or deferred payment plan that requires the transfer of title
22 upon completion of the required payments;
 - 23 2. A transfer of possession or control of property under an agreement that
24 requires the transfer of title upon completion of the required payments
25 and payment of an option price that does not exceed the greater of one
26 hundred dollars (\$100) or one percent (1%) of the total required
27 payments; or

- 1 3. Providing tangible personal property and an operator for the tangible
2 personal property for a fixed or indeterminate period of time. To qualify
3 for this exclusion, the operator must be necessary for the equipment to
4 perform as designed, and the operator must do more than maintain,
5 inspect, or setup the tangible personal property.
- 6 (c) This definition shall apply regardless of the classification of a transaction
7 under generally accepted accounting principles, the Internal Revenue Code, or
8 other provisions of federal, state, or local law;
- 9 (19) (a) "Machinery for new and expanded industry" means machinery:
- 10 1. Directly used in the manufacturing or industrial processing process of:
- 11 a. Tangible personal property at a plant facility;
- 12 b. Distilled spirits or wine at a plant facility or on the premises of a
13 distiller, rectifier, winery, or small farm winery licensed under
14 KRS 243.030 that includes a retail establishment on the premises;
15 or
- 16 c. Malt beverages at a plant facility or on the premises of a brewer or
17 microbrewery licensed under KRS 243.040 that includes a retail
18 establishment;
- 19 2. Which is incorporated for the first time into:
- 20 a. A plant facility established in this state; or
- 21 b. Licensed premises located in this state; and
- 22 3. Which does not replace machinery in the plant facility or licensed
23 premises unless that machinery purchased to replace existing machinery:
- 24 a. Increases the consumption of recycled materials at the plant
25 facility by not less than ten percent (10%);
- 26 b. Performs different functions;
- 27 c. Is used to manufacture a different product; or

- 1 d. Has a greater productive capacity, as measured in units of
2 production, than the machinery being replaced.
- 3 (b) "Machinery for new and expanded industry" does not include repair,
4 replacement, or spare parts of any kind, regardless of whether the purchase of
5 repair, replacement, or spare parts is required by the manufacturer or seller as
6 a condition of sale or as a condition of warranty;
- 7 (20) "Manufacturing" means any process through which material having little or no
8 commercial value for its intended use before processing has appreciable commercial
9 value for its intended use after processing by the machinery;
- 10 (21) "Marketplace" means any physical or electronic means through which one (1) or
11 more retailers may advertise and sell tangible personal property, digital property, or
12 services, or lease tangible personal property or digital property, such as a catalog,
13 Internet Web site, or television or radio broadcast, regardless of whether the
14 tangible personal property, digital property, or retailer is physically present in this
15 state;
- 16 (22) (a) "Marketplace provider" means a person, including any affiliate of the person,
17 that facilitates a retail sale by satisfying subparagraphs 1. and 2. of this
18 paragraph as follows:
- 19 1. The person directly or indirectly:
- 20 a. Lists, makes available, or advertises tangible personal property,
21 digital property, or services for sale by a marketplace retailer in a
22 marketplace owned, operated, or controlled by the person;
- 23 b. Facilitates the sale of a marketplace retailer's product through a
24 marketplace by transmitting or otherwise communicating an offer
25 or acceptance of a retail sale of tangible personal property, digital
26 property, or services between a marketplace retailer and a
27 purchaser in a forum including a shop, store, booth, catalog,

- 1 Internet site, or similar forum;
- 2 c. Owns, rents, licenses, makes available, or operates any electronic
3 or physical infrastructure or any property, process, method,
4 copyright, trademark, or patent that connects marketplace retailers
5 to purchasers for the purpose of making retail sales of tangible
6 personal property, digital property, or services;
- 7 d. Provides a marketplace for making retail sales of tangible personal
8 property, digital property, or services, or otherwise facilitates retail
9 sales of tangible personal property, digital property, or services,
10 regardless of ownership or control of the tangible personal
11 property, digital property, or services, that are the subject of the
12 retail sale;
- 13 e. Provides software development or research and development
14 activities related to any activity described in this subparagraph, if
15 the software development or research and development activities
16 are directly related to the physical or electronic marketplace
17 provided by a marketplace provider;
- 18 f. Provides or offers fulfillment or storage services for a marketplace
19 retailer;
- 20 g. Sets prices for a marketplace retailer's sale of tangible personal
21 property, digital property, or services;
- 22 h. Provides or offers customer service to a marketplace retailer or a
23 marketplace retailer's customers, or accepts or assists with taking
24 orders, returns, or exchanges of tangible personal property, digital
25 property, or services sold by a marketplace retailer; or
- 26 i. Brands or otherwise identifies sales as those of the marketplace
27 provider; and

- 1 2. The person directly or indirectly:
- 2 a. Collects the sales price or purchase price of a retail sale of tangible
- 3 personal property, digital property, or services;
- 4 b. Provides payment processing services for a retail sale of tangible
- 5 personal property, digital property, or services;
- 6 c. Through terms and conditions, agreements, or arrangements with a
- 7 third party, collects payment in connection with a retail sale of
- 8 tangible personal property, digital property, or services from a
- 9 purchaser and transmits that payment to the marketplace retailer,
- 10 regardless of whether the person collecting and transmitting the
- 11 payment receives compensation or other consideration in exchange
- 12 for the service; or
- 13 d. Provides a virtual currency that purchasers are allowed or required
- 14 to use to purchase tangible personal property, digital property, or
- 15 services.
- 16 (b) "Marketplace provider" includes but is not limited to a person that satisfies the
- 17 requirements of this subsection through the ownership, operation, or control
- 18 of a digital distribution service, digital distribution platform, online portal, or
- 19 application store;
- 20 (23) "Marketplace retailer" means a seller that makes retail sales through any
- 21 marketplace owned, operated, or controlled by a marketplace provider;
- 22 (24) (a) "Occasional sale" includes:
- 23 1. A sale of tangible personal property or digital property not held or used
- 24 by a seller in the course of an activity for which he or she is required to
- 25 hold a seller's permit, provided such sale is not one (1) of a series of
- 26 sales sufficient in number, scope, and character to constitute an activity
- 27 requiring the holding of a seller's permit. In the case of the sale of the

1 entire, or a substantial portion of the nonretail assets of the seller, the
2 number of previous sales of similar assets shall be disregarded in
3 determining whether or not the current sale or sales shall qualify as an
4 occasional sale; or

5 2. Any transfer of all or substantially all the tangible personal property or
6 digital property held or used by a person in the course of such an activity
7 when after such transfer the real or ultimate ownership of such property
8 is substantially similar to that which existed before such transfer.

9 (b) For the purposes of this subsection, stockholders, bondholders, partners, or
10 other persons holding an interest in a corporation or other entity are regarded
11 as having the "real or ultimate ownership" of the tangible personal property or
12 digital property of such corporation or other entity;

13 (25) (a) "Other direct mail" means any direct mail that is not advertising and
14 promotional direct mail, regardless of whether advertising and promotional
15 direct mail is included in the same mailing.

16 (b) "Other direct mail" includes but is not limited to:

17 1. Transactional direct mail that contains personal information specific to
18 the addressee, including but not limited to invoices, bills, statements of
19 account, and payroll advices;

20 2. Any legally required mailings, including but not limited to privacy
21 notices, tax reports, and stockholder reports; and

22 3. Other nonpromotional direct mail delivered to existing or former
23 shareholders, customers, employees, or agents, including but not limited
24 to newsletters and informational pieces.

25 (c) "Other direct mail" does not include the development of billing information or
26 the provision of any data processing service that is more than incidental to the
27 production of printed material;

- 1 (26) "Person" includes any individual, firm, copartnership, joint venture, association,
2 social club, fraternal organization, corporation, estate, trust, business trust, receiver,
3 trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other
4 group or combination acting as a unit;
- 5 (27) "Permanent," as the term applies to digital property, means perpetual or for an
6 indefinite or unspecified length of time;
- 7 (28) "Plant facility" means a single location that is exclusively dedicated to
8 manufacturing or industrial processing activities. A location shall be deemed to be
9 exclusively dedicated to manufacturing or industrial processing activities even if
10 retail sales are made there, provided that the retail sales are incidental to the
11 manufacturing or industrial processing activities occurring at the location. The term
12 "plant facility" shall not include any restaurant, grocery store, shopping center, or
13 other retail establishment;
- 14 (29) (a) "Prewritten computer software" means:
- 15 1. Computer software, including prewritten upgrades, that are not designed
16 and developed by the author or other creator to the specifications of a
17 specific purchaser;
 - 18 2. Software designed and developed by the author or other creator to the
19 specifications of a specific purchaser when it is sold to a person other
20 than the original purchaser; or
 - 21 3. Any portion of prewritten computer software that is modified or
22 enhanced in any manner, where the modification or enhancement is
23 designed and developed to the specifications of a specific purchaser,
24 unless there is a reasonable, separately stated charge on an invoice or
25 other statement of the price to the purchaser for the modification or
26 enhancement.
- 27 (b) When a person modifies or enhances computer software of which the person

1 is not the author or creator, the person shall be deemed to be the author or
2 creator only of the modifications or enhancements the person actually made.

3 (c) The combining of two (2) or more prewritten computer software programs or
4 portions thereof does not cause the combination to be other than prewritten
5 computer software;

6 (30) (a) "Purchase" means any transfer of title or possession, exchange, barter, lease,
7 or rental, conditional or otherwise, in any manner or by any means
8 whatsoever, of:

- 9 1. Tangible personal property;
- 10 2. An extended warranty service;
- 11 3. Digital property transferred electronically; or
- 12 4. Services included in KRS 139.200;

13 for a consideration.

14 (b) "Purchase" includes:

- 15 1. When performed outside this state or when the customer gives a resale
16 certificate, the producing, fabricating, processing, printing, or imprinting
17 of tangible personal property for a consideration for consumers who
18 furnish either directly or indirectly the materials used in the producing,
19 fabricating, processing, printing, or imprinting;
- 20 2. A transaction whereby the possession of tangible personal property or
21 digital property is transferred but the seller retains the title as security for
22 the payment of the price; and
- 23 3. A transfer for a consideration of the title or possession of tangible
24 personal property or digital property which has been produced,
25 fabricated, or printed to the special order of the customer, or of any
26 publication;

27 (31) "Recycled materials" means materials which have been recovered or diverted from

1 the solid waste stream and reused or returned to use in the form of raw materials or
2 products;

3 (32) "Recycling purposes" means those activities undertaken in which materials that
4 would otherwise become solid waste are collected, separated, or processed in order
5 to be reused or returned to use in the form of raw materials or products;

6 (33) "Remote retailer" means a retailer with no physical presence in this state;

7 (34) (a) "Repair, replacement, or spare parts" means any tangible personal property
8 used to maintain, restore, mend, or repair machinery or equipment.

9 (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or
10 industrial tools;

11 (35) (a) "Retailer" means:

12 1. Every person engaged in the business of making retail sales of tangible
13 personal property, digital property, or furnishing any services in a retail
14 sale included in KRS 139.200;

15 2. Every person engaged in the business of making sales at auction of
16 tangible personal property or digital property owned by the person or
17 others for storage, use or other consumption, except as provided in
18 paragraph (c) of this subsection;

19 3. Every person making more than two (2) retail sales of tangible personal
20 property, digital property, or services included in KRS 139.200 during
21 any twelve (12) month period, including sales made in the capacity of
22 assignee for the benefit of creditors, or receiver or trustee in bankruptcy;

23 4. Any person conducting a race meeting under the provision of KRS
24 Chapter 230, with respect to horses which are claimed during the
25 meeting.

26 (b) When the department determines that it is necessary for the efficient
27 administration of this chapter to regard any salesmen, representatives,

1 peddlers, or canvassers as the agents of the dealers, distributors, supervisors or
2 employers under whom they operate or from whom they obtain the tangible
3 personal property, digital property, or services sold by them, irrespective of
4 whether they are making sales on their own behalf or on behalf of the dealers,
5 distributors, supervisors or employers, the department may so regard them and
6 may regard the dealers, distributors, supervisors or employers as retailers for
7 purposes of this chapter.

8 (c) 1. Any person making sales at a charitable auction for a qualifying entity
9 shall not be a retailer for purposes of the sales made at the charitable
10 auction if:

11 a. The qualifying entity, not the person making sales at the auction, is
12 sponsoring the auction;

13 b. The purchaser of tangible personal property at the auction directly
14 pays the qualifying entity sponsoring the auction for the property
15 and not the person making the sales at the auction; and

16 c. The qualifying entity, not the person making sales at the auction, is
17 responsible for the collection, control, and disbursement of the
18 auction proceeds.

19 2. If the conditions set forth in subparagraph 1. of this paragraph are met,
20 the qualifying entity sponsoring the auction shall be the retailer for
21 purposes of the sales made at the charitable auction.

22 3. For purposes of this paragraph, "qualifying entity" means a resident:

23 a. Church;

24 b. School;

25 c. Civic club; or

26 d. Any other nonprofit charitable, religious, or educational
27 organization;

1 (36) "Retail sale" means any sale, lease, or rental for any purpose other than resale,
2 sublease, or subrent;

3 (37) (a) "Ringtones" means digitized sound files that are downloaded onto a device
4 and that may be used to alert the customer with respect to a communication.

5 (b) "Ringtones" shall not include ringback tones or other digital files that are not
6 stored on the purchaser's communications device;

7 (38) (a) "Sale" means:

8 1. The furnishing of any services included in KRS 139.200;

9 2. Any transfer of title or possession, exchange, barter, lease, or rental,
10 conditional or otherwise, in any manner or by any means whatsoever, of:

11 a. Tangible personal property; or

12 b. Digital property transferred electronically;

13 for a consideration.

14 (b) "Sale" includes but is not limited to:

15 1. The producing, fabricating, processing, printing, or imprinting of
16 tangible personal property or digital property for a consideration for
17 purchasers who furnish, either directly or indirectly, the materials used
18 in the producing, fabricating, processing, printing, or imprinting;

19 2. A transaction whereby the possession of tangible personal property or
20 digital property is transferred, but the seller retains the title as security
21 for the payment of the price; and

22 3. A transfer for a consideration of the title or possession of tangible
23 personal property or digital property which has been produced,
24 fabricated, or printed to the special order of the purchaser.

25 (c) This definition shall apply regardless of the classification of a transaction
26 under generally accepted accounting principles, the Internal Revenue Code, or
27 other provisions of federal, state, or local law;

- 1 (39) "Seller" includes every person engaged in the business of selling tangible personal
2 property, digital property, or services of a kind, the gross receipts from the retail
3 sale of which are required to be included in the measure of the sales tax, and every
4 person engaged in making sales for resale;
- 5 (40) (a) "Storage" includes any keeping or retention in this state for any purpose
6 except sale in the regular course of business or subsequent use solely outside
7 this state of tangible personal property or digital property purchased from a
8 retailer.
- 9 (b) "Storage" does not include the keeping, retaining, or exercising any right or
10 power over tangible personal property for the purpose of subsequently
11 transporting it outside the state for use thereafter solely outside the state, or for
12 the purpose of being processed, fabricated, or manufactured into, attached to,
13 or incorporated into, other tangible personal property to be transported outside
14 the state and thereafter used solely outside the state;
- 15 (41) "Tangible personal property" means personal property which may be seen, weighed,
16 measured, felt, or touched, or which is in any other manner perceptible to the senses
17 and includes natural, artificial, and mixed gas, electricity, water, steam, and
18 prewritten computer software;
- 19 (42) "Taxpayer" means any person liable for tax under this chapter;
- 20 (43) "Transferred electronically" means accessed or obtained by the purchaser by means
21 other than tangible storage media; and
- 22 (44) (a) "Use" includes the exercise of:
- 23 1. Any right or power over tangible personal property or digital property
24 incident to the ownership of that property, or by any transaction in which
25 possession is given, or by any transaction involving digital property
26 where the right of access is granted; or
- 27 2. Any right or power to benefit from extended warranty services.

1 (b) "Use" does not include the keeping, retaining, or exercising any right or power
2 over tangible personal property or digital property for the purpose of:

- 3 1. Selling tangible personal property or digital property in the regular
4 course of business; or
- 5 2. Subsequently transporting tangible personal property outside the state
6 for use thereafter solely outside the state, or for the purpose of being
7 processed, fabricated, or manufactured into, attached to, or incorporated
8 into, other tangible personal property to be transported outside the state
9 and thereafter used solely outside the state.

10 ➔Section 9. There is hereby appropriated Federal Fund moneys from the State
11 Fiscal Recovery Fund of the American Rescue Plan Act in the amount of \$20,000,000 in
12 fiscal year 2022-2023 to the Rural Infrastructure Improvement Fund established in
13 Section 5 of this Act.

14 ➔Section 10. 2021 Ky. Acts ch. 171, sec. 3, as amended by 2021 Ky. Acts ch.
15 196, sec. 4, is amended to read as follows:

16 (1) There is hereby appropriated *Federal Funds from the Coronavirus Capital*
17 *Projects Fund of the American Rescue Plan Act of 2021* ~~federal funds~~ in the amount of
18 *\$182,769,000 and Federal Funds from the State Fiscal Recovery Fund of the*
19 *American Rescue Plan Act of 2021 in the amount of \$67,231,000* ~~\$250,000,000~~ in
20 fiscal year 2021-2022 to the broadband deployment fund, with no more than \$50,000,000
21 of which to be awarded before *May* ~~April~~ 1, 2022.

22 (2) ~~{(a)}~~In addition to the appropriation in subsection (1) of this section, there is
23 hereby appropriated Federal Funds from the State Fiscal Recovery Fund of the American
24 Rescue Plan Act in the amount of \$50,000,000 in fiscal year 2020-2021. Notwithstanding
25 KRS 45.229, the Federal Fund appropriation in fiscal year 2020-2021 shall not lapse and
26 shall carry forward for use in fiscal year 2021-2022 *and fiscal year 2022-2023*.~~{~~

27 ~~(b) The appropriation in paragraph (a) of this subsection shall be used for projects~~

1 ~~that provide broadband service in furtherance of securing economic development~~
2 ~~opportunities for commercial and industrial customers, excluding the broadband service~~
3 ~~provider itself.]~~

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

6 (a) ~~Related to the appropriation in subsection (1) of this section,]~~ the moneys are
7 awarded based on the ~~following]~~ criteria in subsection (9) of Section 4 of this Act ~~the~~
8 ~~order as listed:~~

9 1. ~~Projects in underserved areas or unserved areas where local, state, or federal~~
10 ~~funds are not currently designated;~~

11 2. ~~Projects within underserved areas or unserved areas where local, state, or~~
12 ~~federal broadband funds are inadequate; and~~

13 3. ~~Projects that reach the customers that are the least economical to serve;~~

14 (b) ~~Related to the appropriations in subsections (1) and (2) of this section, a~~
15 ~~request for proposal shall be issued for projects;~~

16 (c) ~~Notwithstanding KRS 224A.1121(5)(f) and (10), and related to the~~
17 ~~appropriations in subsections (1) and (2) of this section, projects will require:~~

18 1. ~~A private match of moneys of not less than 50 percent of the total project cost;~~
19 ~~or~~

20 2. ~~Matching funds from a city, county, urban county government, or consolidated~~
21 ~~local government of not less than 50 percent of the total project cost; and~~

22 (d) ~~Related to the appropriations in subsections (1) and (2) of this section, project~~
23 ~~scope should be for the smallest feasible geographical area.]~~

24 (4) The agency may provide incentive for timely completion and disincentive for
25 not meeting agreed upon timeframes.

26 (5) (a) The agency administering the broadband deployment fund shall
27 promulgate administrative regulations to develop a process for:

- 1 1. Receiving complaints related to insufficient broadband service;
- 2 2. Incorporating forms for the collection of data related to the complaints;
- 3 3. Reporting the information collected; and
- 4 4. Referring complaints to the Office of Attorney General, Federal
- 5 Communications Commission, or Federal Trade Commission, as appropriate.

6 (b) The agency shall report to the Legislative Research Commission on a
7 quarterly basis, beginning October 1, 2021, and the first day of each calendar quarter
8 thereafter, the following information:

- 9 1. The location, by county, for each consumer complaint received related to
- 10 insufficient broadband service;
- 11 2. A brief description of the complaint;
- 12 3. The broadband provider related to the complaint received;
- 13 4. The response of the broadband provider regarding the complaint received;
- 14 5. Whether the complaint was resolved to the satisfaction of the consumer; and
- 15 6. Whether a referral was made to the Office of Attorney General, Federal
- 16 Communications Commission, or Federal Trade Commission.

17 ➔Section 11. The following is repealed: 2021 Ky. Acts ch. 194, secs. 16 and 17.

18 ➔Section 12. Whereas Internet access is critical for families across the
19 Commonwealth to stay informed and connected, an emergency is declared to exist, and
20 this Act takes effect upon its passage and approval by the Governor or upon its otherwise
21 becoming a law.