

1 AN ACT relating to utility pole replacement for broadband network deployment,
2 making an appropriation therefor, and 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) The General Assembly hereby finds and declares that:*

7 *(a) A rural infrastructure improvement fund, and a program to administer the*
8 *fund, is necessary to further the Commonwealth's goal to expand and*
9 *accelerate access to broadband service throughout the entire*
10 *Commonwealth.*

11 *(b) Supporting the replacement of utility poles will provide benefits to Kentucky*
12 *residents by facilitating the construction of broadband networks,*
13 *minimizing the potential for disputes between broadband providers and*
14 *utility pole owners that could otherwise delay deployment, improving the*
15 *resiliency and longevity of broadband infrastructure, and addressing needs*
16 *for broadband investment not yet fully met by existing programs.*

17 *(2) As used in this section:*

18 *(a) "Application" means an application made under subsection (4) of this*
19 *section for an eligible pole replacement reimbursement;*

20 *(b) "Authority" means the Kentucky Infrastructure Authority;*

21 *(c) "Eligible pole replacement" means the removal of an existing utility pole*
22 *and replacement with a new utility pole in an unserved area in order to*
23 *accommodate the attachment of facilities to be used in whole or in part by a*
24 *retail provider to provide qualifying broadband service access to residences*
25 *or businesses within an unserved area. "Eligible pole replacement" does*
26 *not include the removal and replacement of a utility pole in order to*
27 *accommodate facilities used only for the provision of wholesale broadband*

1 or data transport service, where the owner of the facilities or its affiliate
2 does not use the facilities to provide qualifying broadband services directly
3 to residences or businesses;

4 (d) "Eligible pole replacement costs" means:

5 1. The actual and reasonable costs paid or incurred to perform an
6 eligible pole replacement for which the party incurring or paying
7 those costs has not received or is not entitled to receive reimbursement
8 under the terms of a state or federal grant program for the deployment
9 of broadband facilities, whether through a specific reimbursement or
10 through support payments that equal or exceed the responsible party's
11 actual deployment costs, including any pole replacement costs. The
12 receipt of a grant that covers only a portion of the grant recipient's
13 actual deployment costs, including pole replacement costs, where the
14 grant recipient pays or incurs pole replacement costs using its own
15 funds, shall not disqualify the recipient from applying for and
16 receiving eligible pole replacement costs to cover the remainder of
17 their unreimbursed costs under this section;

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

21 3. The costs of reimbursing another party for the costs of performing an
22 eligible pole replacement, when paid or incurred by the person
23 responsible for the costs.

24 "Eligible pole replacement costs" does not include costs paid or incurred to
25 perform an eligible pole replacement by a party who is not responsible for
26 those costs, and which are charged or passed along to the responsible party;

27 (e) "Fund" means the rural infrastructure improvement fund established by

1 subsection (3) of this section;

2 (f) "Pole owner" means any person or entity that owns or controls a utility
3 pole;

4 (g) "Program" means the Kentucky Rural Infrastructure Improvement
5 Program established by subsection (4) of this section;

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

11 (i) "Unserved area" means:

12 1. An area where fixed, terrestrial broadband service with a minimum
13 twenty-five (25) megabits per second downstream and three (3)
14 megabits per second upstream is not available at the time of a request
15 by a retail broadband service provider to attach facilities to a pole in
16 that location; and

17 2. For an applicant that is the recipient of a federal or state grant to
18 deploy broadband service, a location in which the conditions of the
19 grant limit its availability to areas lacking access to Internet access
20 providing speeds of at least twenty-five (25) megabits per second in the
21 downstream direction and three (3) megabits per second in the
22 upstream direction;

23 "Unserved area" does not include any area where a person other than the
24 applicant is subject to a binding, undefaulted commitment to deploy
25 qualifying broadband service; and

26 (j) "Utility pole" means any pole used, in whole or in part, for any wire
27 communications or electric distribution, regardless of the owner or operator

1 of the pole.

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

6 (b) The rural infrastructure improvement fund shall be a dedicated fund, and
7 all money deposited to the credit of the fund shall only be used by the
8 authority to provide reimbursements to qualified applicants under the Rural
9 Infrastructure Improvement Program established under subsection (4) of
10 this section and for the purposes of covering the costs of program
11 administration and operation.

12 (c) Money in the rural infrastructure improvement fund shall only be used in a
13 manner consistent with federal law.

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

17 (e) Interest earned on money deposited to the credit of the fund shall be
18 retained in the fund.

19 (4) (a) There is hereby established the Kentucky Rural Infrastructure Improvement
20 Program for the purpose of expediting and facilitating the deployment of
21 broadband service to individuals, businesses, agricultural operations, and
22 community access points in unserved areas by reimbursing a portion of
23 eligible pole replacement costs incurred by eligible applicants. An applicant
24 who pays or incurs the costs of an eligible pole replacement to
25 accommodate broadband facilities consistent with this section may apply to
26 the authority for reimbursement in an amount equal to fifty percent (50%)
27 of eligible pole replacement costs paid or incurred by the applicant or five

1 thousand dollars (\$5,000), whichever is less, for each pole replaced.

2 (b) The authority shall administer and provide staff assistance for the program
3 and shall be responsible for receiving, reviewing, and approving
4 applications for pole reimbursements. No later than September 1, 2022, the
5 authority shall promulgate administrative regulations pursuant to KRS
6 Chapter 13A necessary for the efficient administration of the requirements
7 of this section.

8 (c) The authority shall award pole reimbursements under the Rural
9 Infrastructure Improvement Program using moneys from the rural
10 infrastructure improvement fund created by subsection (3) of this section.

11 (d) Within sixty (60) days of receipt of a completed application establishing the
12 eligibility of costs for reimbursement, and to the extent that moneys are
13 available in the fund, the authority shall award pole reimbursements as
14 follows:

15 1. The lesser of five thousand dollars (\$5,000) or fifty percent (50%) of
16 the total amount paid or incurred by the applicant for eligible pole
17 replacement costs; or

18 2. One hundred percent (100%) of the documented and reasonable
19 administrative expenses incurred by the applicant in preparing and
20 submitting the reimbursement application, including expenses
21 charged by a pole owner in connection with coordination pursuant to
22 paragraph (i) of this subsection, of an amount not to exceed five
23 percent (5%) of eligible pole replacement costs.

24 (e) The authority shall award and fund pole reimbursements from moneys in
25 the rural infrastructure improvement fund created by subsection (3) of this
26 section until the fund is exhausted.

27 (f) Any application pending at the exhaustion of the money in the rural

1 infrastructure improvement fund created by subsection (3) of this section
2 shall be deemed denied but may be refiled if sufficient funds are later made
3 available in the fund.

4 (g) No later than sixty (60) days after the fund receives moneys for the purpose
5 of providing pole replacement reimbursements to qualified applicants, the
6 authority shall publish a form application for pole replacement
7 reimbursements that shall require:

8 1. Information sufficient to establish the number, cost, and eligibility of
9 eligible pole replacements that qualify for reimbursement;

10 2. Documentation sufficient to establish that the claimed eligible pole
11 replacements have been completed;

12 3. The amount of program reimbursement requested in the application
13 and any grant funding or accounting information required to justify
14 the amount of the request;

15 4. A statement that the costs for which reimbursement is requested have
16 not been reimbursed through any other state or federal broadband
17 grant program;

18 5. A notarized statement from an officer or agent of the applicant that
19 the contents of the application are true and accurate and that the
20 applicant accepts the requirements of this section and the
21 administrative regulations promulgated hereunder as a condition of
22 receiving an award of program reimbursement;

23 6. Receipts verifying the amount of eligible pole replacement costs paid
24 by the applicant; and

25 7. Any other information necessary for the authority to comply with any
26 conditions on federal funding used in connection with the program.

27 (h) Any person who pays or incurs eligible pole replacement costs may submit

1 an application for reimbursement for those costs in accordance with this
2 subsection and the administrative regulations promulgated hereunder.

3 (i) If the necessary information is not otherwise reasonably available to the
4 applicant, the applicant may request a pole owner performing an eligible
5 pole replacement to provide the number and costs of the pole replacements,
6 receipts verifying the amount of pole replacement costs paid by the
7 applicant, and confirmation that the pole replacement costs were incurred
8 to accommodate the applicant's attachment and not due to some other
9 reason. In the event the authority requires additional information from an
10 applicant following the submission of an application to confirm the
11 eligibility of costs in an application that is in the possession of the pole
12 owner and not otherwise reasonably available to the applicant, the applicant
13 may also request that the pole owner assist with providing the information
14 as requested by the authority. A pole owner shall coordinate in good faith to
15 provide the information to the applicant, and may require reimbursement
16 from the broadband provider of its actual and reasonable administrative
17 expenses in connection with the coordination, which shall not exceed five
18 percent (5%) of the eligible pole replacement costs.

19 (j) As a condition of receiving reimbursement under this subsection, an
20 applicant shall:

- 21 1. Certify its compliance with the requirements of this section;
- 22 2. Agree to comply with any requirements that the authority determines
23 to be necessary conditions on federal funding used in connection with
24 the program; and
- 25 3. Agree to refund, with interest at the applicable federal funds rate as
26 specified by KRS 355.4A-506, to the fund or to the general fund at the
27 direction of the authority, any reimbursements or portions of

1 reimbursements received from the fund under this subsection, if the
2 authority finds, upon substantial evidence and after notice and
3 opportunity to respond, that the recipient materially violated any of the
4 requirements agreed to of this section.

5 (k) As a condition of receiving reimbursement under this section, an applicant
6 that is a pole owner shall agree to not include in any rates or fees charged
7 for its services any eligible pole replacement costs that were reimbursed by
8 the program, paid for by a broadband provider, or funded by another grant
9 source.

10 (l) No later than sixty (60) days after the fund receives moneys for the purpose
11 of providing pole replacement reimbursements to qualified applicants, the
12 authority shall publish and maintain on its Web site:

13 1. Statistics on the number of applications received, processed, and
14 rejected by the authority under the pole replacement program;

15 2. Statistics on the size, number, and status of reimbursements awarded
16 by the authority pursuant to the pole replacement program, including
17 the pole owners and broadband providers receiving reimbursements;
18 and

19 3. The amount of money remaining in the fund.

20 (m) No later than one (1) year after the fund receives moneys for the purpose of
21 providing pole replacement reimbursements to qualified applicants, the
22 Auditor of Public Accounts shall audit the fund and its administration by
23 the authority for compliance with the requirements of subsection (3) of this
24 section.

25 (n) No later than one (1) year after the exhaustion of the money in the fund, the
26 authority shall file a report with the Legislative Research Commission that
27 identifies and examines the deployment of broadband infrastructure and

1 *technology facilitated by the eligible pole reimbursements the authority has*
2 *awarded under this section.*

3 ➔Section 2. There is hereby appropriated Federal Fund moneys from the State
4 Fiscal Recovery Fund of the American Rescue Plan Act in the amount of \$56,000,000 in
5 fiscal year 2022-2023 to the Rural Infrastructure Improvement Fund established in
6 subsection (3) of Section 1 of this Act to accomplish the purposes of this Act.

7 ➔Section 3. Whereas it is critical to support the replacement of utility poles to
8 facilitate and expedite the construction of broadband networks, and to address the needs
9 for broadband investment not yet fully met by existing programs, an emergency is
10 declared to exist, and this Act takes effect upon its passage and approval by the Governor
11 or upon its otherwise becoming a law.