

1 AN ACT relating to broadband services.

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

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

4 (1) The General Assembly recognizes and declares:

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

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

11 (2) As used in this section:

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

19 (b) "Underserved area" means any project area where broadband service with a
20 minimum twenty-five (25) megabits per second downstream and three (3)
21 megabits per second upstream is not available; and

22 (c) "Unserved area" means any project area where broadband service with a
23 minimum ten (10) megabits per second downstream and one (1) megabit per
24 second upstream is 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 1. Leasing excess capacity on any fiber optic cable used to support the
3 distribution cooperative's distribution system;
- 4 2. Issuing securities or evidences of indebtedness in an amount not to
5 exceed twenty-five percent (25%) of the net book value of its assets, the
6 proceeds of which shall be used for the exclusive purpose of capitalizing
7 the affiliate; or
- 8 3. Pledging up to twenty-five percent (25%) of the net book value of its
9 assets as collateral for a loan entered into by the affiliate for the purpose
10 of providing broadband services; and

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

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

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

23 (b) The issuance or assumption of securities or evidence of indebtedness satisfies
24 the criteria of KRS 278.300(3) in the case of any distribution cooperative's
25 application for approval of an issuance of securities or evidence of
26 indebtedness or pledge of assets under subsection (3)(a)2. and 3. of this
27 section.

- 1 (5) A distribution cooperative shall comply with the cost allocation requirements of:
- 2 (a) KRS 278.2201, 278.2203, 278.2205, 278.2207, 278.2209, and 278.2211; and
- 3 (b) Only KRS 278.2213(1) and (3) with regard to any costs associated with its
- 4 facilitation of an affiliate's provision of broadband services.
- 5 (6) **(a) If a distribution cooperative or its affiliate applies to provide broadband**
- 6 **services within an unserved area or underserved area and that application is**
- 7 **contested by another provider of broadband services on the basis that**
- 8 **service is already provided within that area, the provider issuing the**
- 9 **challenge shall have one (1) year to document that broadband services are**
- 10 **available for the entire area under challenge.**
- 11 **(b) If the provider issuing the challenge does not document that full coverage is**
- 12 **provided within the unserved area or underserved area within the one (1)**
- 13 **year period provided in paragraph (a) of this subsection, the provider shall:**
- 14 **1. Forfeit the future ability to:**
- 15 **a. Contest the provision of broadband services by any provider; and**
- 16 **b. Receive grant funds; and**
- 17 **2. Return all grants awarded for the area of challenge.**
- 18 **(7)** Prior to December 31, 2021, the commission shall promulgate administrative
- 19 regulations regarding pole attachments under the commission's jurisdiction,
- 20 including those necessary for the provision of broadband service.