

SECOND REGULAR SESSION

HOUSE BILL NO. 2015

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FITZWATER.

4689H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 386.020 and 523.010, RSMo, and to enact in lieu thereof four new sections relating to broadband infrastructure.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 386.020 and 523.010, RSMo, are repealed and four new sections
2 enacted in lieu thereof, to be known as sections 386.020, 393.1420, 393.1800, and 523.010, to
3 read as follows:

386.020. As used in this chapter, the following words and phrases mean:

- 2 (1) "Alternative local exchange telecommunications company", a local exchange
3 telecommunications company certified by the commission to provide basic or nonbasic local
4 telecommunications service or switched exchange access service, or any combination of such
5 services, in a specific geographic area subsequent to December 31, 1995;
- 6 (2) "Alternative operator services company", any certificated interexchange
7 telecommunications company which receives more than forty percent of its annual
8 Missouri intrastate telecommunications service revenues from the provision of operator
9 services pursuant to operator services contracts with traffic aggregators;
- 10 (3) "Basic interexchange telecommunications service" includes, at a minimum, two-
11 way switched voice service between points in different local calling scopes as determined by
12 the commission and shall include other services as determined by the commission by rule
13 upon periodic review and update;
- 14 (4) "Basic local telecommunications service", two-way switched voice service within
15 a local calling scope as determined by the commission comprised of any of the following
16 services and their recurring and nonrecurring charges:

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (a) Multiparty, single line, including installation, touchtone dialing, and any
18 applicable mileage or zone charges;

19 (b) Assistance programs for installation of, or access to, basic local
20 telecommunications services for qualifying economically disadvantaged or disabled
21 customers or both, including, but not limited to, lifeline services and link-up Missouri
22 services for low-income customers or dual-party relay service for the hearing impaired and
23 speech impaired;

24 (c) Access to local emergency services including, but not limited to, 911 service
25 established by local authorities;

26 (d) Access to basic local operator services;

27 (e) Access to basic local directory assistance;

28 (f) Standard intercept service;

29 (g) Equal access to interexchange carriers consistent with rules and regulations of the
30 Federal Communications Commission;

31 (h) One standard white pages directory listing.

32

33 Basic local telecommunications service does not include optional toll-free calling outside a
34 local calling scope but within a community of interest, available for an additional monthly fee
35 or the offering or provision of basic local telecommunications service at private shared-tenant
36 service locations;

37 (5) "Cable television service", the one-way transmission to subscribers of video
38 programming or other programming service and the subscriber interaction, if any, which is
39 required for the selection of such video programming or other programming service;

40 (6) "Carrier of last resort", any telecommunications company which is obligated to
41 offer basic local telecommunications service to all customers who request service in a
42 geographic area defined by the commission and cannot abandon this obligation without
43 approval from the commission;

44 (7) "Commission", the "Public Service Commission" hereby created;

45 (8) "Commissioner", one of the members of the commission;

46 (9) "Competitive telecommunications company", a telecommunications company
47 which has been classified as such by the commission pursuant to section 392.245 or 392.361;

48 (10) "Competitive telecommunications service", a telecommunications service which
49 has been classified as such by the commission pursuant to section 392.245 or to section
50 392.361, or which has become a competitive telecommunications service pursuant to section
51 392.370;

52 (11) "Corporation" includes a corporation, company, association and joint stock
53 association or company;

54 (12) "Customer-owned pay telephone", a privately owned telecommunications device
55 that is not owned, leased or otherwise controlled by a local exchange telecommunications
56 company and which provides telecommunications services for a use fee to the general public;

57 (13) "Effective competition" shall be determined by the commission based on:

58 (a) The extent to which services are available from alternative providers in the
59 relevant market;

60 (b) The extent to which the services of alternative providers are functionally
61 equivalent or substitutable at comparable rates, terms and conditions;

62 (c) The extent to which the purposes and policies of chapter 392, including the
63 reasonableness of rates, as set out in section 392.185, are being advanced;

64 (d) Existing economic or regulatory barriers to entry; and

65 (e) Any other factors deemed relevant by the commission and necessary to implement
66 the purposes and policies of chapter 392;

67 (14) "Electric plant" includes all real estate, fixtures and personal property operated,
68 controlled, owned, used or to be used for, ~~or~~ in connection with, or to facilitate the
69 generation, transmission, distribution, sale or furnishing of electricity for light, heat or power;
70 and any conduits, ducts or other devices, materials, apparatus or property for containing,
71 holding or carrying conductors used or to be used for the transmission of electricity for light,
72 heat or power; **and broadband infrastructure operated, controlled, owned, used, or to be**
73 **used for, in connection with, or to facilitate the generation, transmission, or distribution**
74 **of electricity or broadband infrastructure services. For purposes of this subdivision,**
75 **"broadband infrastructure" and "broadband infrastructure services" mean the same**
76 **as in subsection 2 of section 393.1420;**

77 (15) "Electrical corporation" includes every corporation, company, association, joint
78 stock company or association, partnership and person, their lessees, trustees or receivers
79 appointed by any court whatsoever, other than a railroad, light rail or street railroad
80 corporation generating electricity solely for railroad, light rail or street railroad purposes or
81 for the use of its tenants and not for sale to others, owning, operating, controlling or managing
82 any electric plant except where electricity is generated or distributed by the producer solely
83 on or through private property for railroad, light rail or street railroad purposes or for its own
84 use or the use of its tenants and not for sale to others. The term "electrical corporation" shall
85 not include:

86 (a) Municipally owned electric utilities operating under chapter 91;

87 (b) Rural electric cooperatives operating under chapter 394;

88 (c) Persons or corporations not otherwise engaged in the production or sale of
89 electricity at wholesale or retail that sell, lease, own, control, operate, or manage one or more
90 electric vehicle charging stations;

91 **(d) Persons or corporations that are not engaged in the generation, transmission,**
92 **or distribution of electricity at wholesale or retail but that operate or control some**
93 **portion of an electrical corporation's broadband infrastructure in connection with**
94 **broadband infrastructure services provided by the electrical corporation, as**
95 **"broadband infrastructure" and "broadband infrastructure services" are defined in**
96 **subsection 2 of section 393.1420;**

97 (16) "Exchange", a geographical area for the administration of telecommunications
98 services, established and described by the tariff of a telecommunications company providing
99 basic local telecommunications service;

100 (17) "Exchange access service", a service provided by a local exchange
101 telecommunications company which enables a telecommunications company or other
102 customer to enter and exit the local exchange telecommunications network in order to
103 originate or terminate interexchange telecommunications service;

104 (18) "Gas corporation" includes every corporation, company, association, joint stock
105 company or association, partnership and person, their lessees, trustees or receivers appointed
106 by any court whatsoever, owning, operating, controlling or managing any gas plant operating
107 for public use under privilege, license or franchise now or hereafter granted by the state or
108 any political subdivision, county or municipality thereof;

109 (19) "Gas plant" includes all real estate, fixtures and personal property owned,
110 operated, controlled, used or to be used for or in connection with or to facilitate the
111 manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or
112 power;

113 (20) "Heating company" includes every corporation, company, association, joint
114 stock company or association, partnership and person, their lessees, trustees or receivers,
115 appointed by any court whatsoever, owning, operating, managing or controlling any plant or
116 property for manufacturing and distributing and selling, for distribution, or distributing hot or
117 cold water, steam or currents of hot or cold air for motive power, heating, cooking, or for any
118 public use or service, in any city, town or village in this state; provided, that no agency or
119 authority created by or operated pursuant to an interstate compact established pursuant to
120 section 70.370 shall be a heating company or subject to regulation by the commission;

121 (21) "High-cost area", a geographic area, which shall follow exchange boundaries and
122 be no smaller than an exchange nor larger than a local calling scope, where the cost of
123 providing basic local telecommunications service as determined by the commission, giving
124 due regard to recovery of an appropriate share of joint and common costs as well as those
125 costs related to carrier of last resort obligations, exceeds the rate for basic local
126 telecommunications service found reasonable by the commission;

- 127 (22) "Incumbent local exchange telecommunications company", a local exchange
128 telecommunications company authorized to provide basic local telecommunications service
129 in a specific geographic area as of December 31, 1995, or a successor in interest to such a
130 company;
- 131 (23) "Interconnected voice over internet protocol service", service that:
132 (a) Enables real-time, two-way voice communications;
133 (b) Requires a broadband connection from the user's location;
134 (c) Requires internet protocol-compatible customer premises equipment; and
135 (d) Permits users generally to receive calls that originate on the public switched
136 telephone network and to terminate calls to the public switched telephone network;
- 137 (24) "Interexchange telecommunications company", any company engaged in the
138 provision of interexchange telecommunications service;
- 139 (25) "Interexchange telecommunications service", telecommunications service
140 between points in two or more exchanges;
- 141 (26) "InterLATA", interexchange telecommunications service between points in
142 different local access and transportation areas;
- 143 (27) "IntraLATA", interexchange telecommunications service between points within
144 the same local access and transportation area;
- 145 (28) "Light rail" includes every rail transportation system in which one or more rail
146 vehicles are propelled electrically by overhead catenary wire upon tracks located substantially
147 within an urban area and are operated exclusively in the transportation of passengers and their
148 baggage, and including all bridges, tunnels, equipment, switches, spurs, tracks, stations, used
149 in connection with the operation of light rail;
- 150 (29) "Line" includes route;
- 151 (30) "Local access and transportation area" or "LATA", contiguous geographic area
152 approved by the U.S. District Court for the District of Columbia in *United States v. Western*
153 *Electric*, Civil Action No. 82-0192 that defines the permissible areas of operations for the Bell
154 Operating companies;
- 155 (31) "Local exchange telecommunications company", any company engaged in the
156 provision of local exchange telecommunications service. A local exchange
157 telecommunications company shall be considered a "large local exchange
158 telecommunications company" if it has at least one hundred thousand access lines in
159 Missouri and a "small local exchange telecommunications company" if it has less than one
160 hundred thousand access lines in Missouri;
- 161 (32) "Local exchange telecommunications service", telecommunications service
162 between points within an exchange;

163 (33) "Long-run incremental cost", the change in total costs of the company of
164 producing an increment of output in the long run when the company uses least cost
165 technology, and excluding any costs that, in the long run, are not brought into existence as a
166 direct result of the increment of output. The relevant increment of output shall be the level of
167 output necessary to satisfy total current demand levels for the service in question, or, for new
168 services, demand levels that can be demonstrably anticipated;

169 (34) "Municipality" includes a city, village or town;

170 (35) "Nonbasic telecommunications services" shall be all regulated
171 telecommunications services other than basic local and exchange access
172 telecommunications services, and shall include the services identified in paragraphs (d)
173 and (e) of subdivision (4) of this section. Any retail telecommunications service offered for
174 the first time after August 28, 1996, shall be classified as a nonbasic telecommunications
175 service, including any new service which does not replace an existing service;

176 (36) "Noncompetitive telecommunications company", a telecommunications
177 company other than a competitive telecommunications company or a transitionally
178 competitive telecommunications company;

179 (37) "Noncompetitive telecommunications service", a telecommunications service
180 other than a competitive or transitionally competitive telecommunications service;

181 (38) "Operator services", operator-assisted interexchange telecommunications service
182 by means of either human or automated call intervention and includes, but is not limited to,
183 billing or completion of calling card, collect, person-to-person, station-to-station or third
184 number billed calls;

185 (39) "Operator services contract", any agreement between a traffic aggregator and a
186 certificated interexchange telecommunications company to provide operator services at a
187 traffic aggregator location;

188 (40) "Person" includes an individual, and a firm or copartnership;

189 (41) "Private shared tenant services" includes the provision of telecommunications
190 and information management services and equipment within a user group located in discrete
191 private premises as authorized by the commission by a commercial-shared services provider
192 or by a user association, through privately owned customer premises equipment and
193 associated data processing and information management services and includes the provision
194 of connections to the facilities of local exchange telecommunications companies and to
195 interexchange telecommunications companies;

196 (42) "Private telecommunications system", a telecommunications system controlled
197 by a person or corporation for the sole and exclusive use of such person, corporation or legal
198 or corporate affiliate thereof;

199 (43) "Public utility" includes every pipeline corporation, gas corporation, electrical
200 corporation, telecommunications company, water corporation, heating company or
201 refrigerating corporation, and sewer corporation, as these terms are defined in this section,
202 and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction,
203 control and regulation of the commission and to the provisions of this chapter;

204 (44) "Railroad" includes every railroad and railway, other than street railroad or light
205 rail, by whatsoever power operated for public use in the conveyance of persons or property
206 for compensation, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks,
207 stations, real estate and terminal facilities of every kind used, operated, controlled or owned
208 by or in connection with any such railroad;

209 (45) "Railroad corporation" includes every corporation, company, association, joint
210 stock company or association, partnership and person, their lessees, trustees or receivers
211 appointed by any court whatsoever, owning, holding, operating, controlling or managing any
212 railroad as defined in this section, or any cars or other equipment used thereon or in
213 connection therewith;

214 (46) "Rate", every individual or joint rate, fare, toll, charge, reconsigning charge,
215 switching charge, rental or other compensation of any corporation, person or public utility, or
216 any two or more such individual or joint rates, fares, tolls, charges, reconsigning charges,
217 switching charges, rentals or other compensations of any corporation, person or public utility
218 or any schedule or tariff thereof;

219 (47) "Resale of telecommunications service", the offering or providing of
220 telecommunications service primarily through the use of services or facilities owned or
221 provided by a separate telecommunications company, but does not include the offering or
222 providing of private shared tenant services;

223 (48) "Service" includes not only the use and accommodations afforded consumers or
224 patrons, but also any product or commodity furnished by any corporation, person or public
225 utility and the plant, equipment, apparatus, appliances, property and facilities employed by
226 any corporation, person or public utility in performing any service or in furnishing any
227 product or commodity and devoted to the public purposes of such corporation, person or
228 public utility, and to the use and accommodation of consumers or patrons;

229 (49) "Sewer corporation" includes every corporation, company, association, joint
230 stock company or association, partnership or person, their lessees, trustees or receivers
231 appointed by any court, owning, operating, controlling or managing any sewer system, plant
232 or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the
233 state for gain, except that the term shall not include sewer systems with fewer than twenty-
234 five outlets;

235 (50) "Sewer system" includes all pipes, pumps, canals, lagoons, plants, structures and
236 appliances, and all other real estate, fixtures and personal property, owned, operated,
237 controlled or managed in connection with or to facilitate the collection, carriage, treatment
238 and disposal of sewage for municipal, domestic or other beneficial or necessary purpose;

239 (51) "Street railroad" includes every railroad by whatsoever type of power operated,
240 and all extensions and branches thereof and supplementary facilities thereto by whatsoever
241 type of vehicle operated, for public use in the conveyance of persons or property for
242 compensation, mainly providing local transportation service upon the streets, highways and
243 public places in a municipality, or in and adjacent to a municipality, and including all cars,
244 buses and other rolling stock, equipment, switches, spurs, tracks, poles, wires, conduits,
245 cables, subways, tunnels, stations, terminals and real estate of every kind used, operated or
246 owned in connection therewith but this term shall not include light rail as defined in this
247 section; and the term "street railroad" when used in this chapter shall also include all motor
248 bus and trolley bus lines and routes and similar local transportation facilities, and the rolling
249 stock and other equipment thereof and the appurtenances thereto, when operated as a part of a
250 street railroad or trolley bus local transportation system, or in conjunction therewith or
251 supplementary thereto, but such term shall not include a railroad constituting or used as part
252 of a trunk line railroad system and any street railroad as defined above which shall be
253 converted wholly to motor bus operation shall nevertheless continue to be included within the
254 term street railroad as used herein;

255 (52) "Telecommunications company" includes telephone corporations as that term is
256 used in the statutes of this state and every corporation, company, association, joint stock
257 company or association, partnership and person, their lessees, trustees or receivers appointed
258 by any court whatsoever, owning, operating, controlling or managing any facilities used to
259 provide telecommunications service for hire, sale or resale within this state. **The term**
260 **"telecommunications company" shall not include electrical corporations that utilize**
261 **broadband infrastructure to provide broadband infrastructure services, as "broadband**
262 **infrastructure" and "broadband infrastructure services" are defined in subsection 2 of**
263 **section 393.1420;**

264 (53) "Telecommunications facilities" includes lines, conduits, ducts, poles, wires,
265 cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices,
266 real estate, easements, apparatus, property and routes used, operated, controlled or owned by
267 any telecommunications company to facilitate the provision of telecommunications service;

268 (54) "Telecommunications service", the transmission of information by wire, radio,
269 optical cable, electronic impulses, or other similar means. As used in this definition,
270 "information" means knowledge or intelligence represented by any form of writing, signs,

271 signals, pictures, sounds, or any other symbols. Telecommunications service does not
272 include:

273 (a) The rent, sale, lease, or exchange for other value received of customer premises
274 equipment except for customer premises equipment owned by a telephone company
275 certificated or otherwise authorized to provide telephone service prior to September 28, 1987,
276 and provided under tariff or in inventory on January 1, 1983, which must be detariffed no
277 later than December 31, 1987, and thereafter the provision of which shall not be a
278 telecommunications service, and except for customer premises equipment owned or provided
279 by a telecommunications company and used for answering 911 or emergency calls;

280 (b) Answering services and paging services;

281 (c) The offering of radio communication services and facilities when such services
282 and facilities are provided under a license granted by the Federal Communications
283 Commission under the commercial mobile radio services rules and regulations;

284 (d) Services provided by a hospital, hotel, motel, or other similar business whose
285 principal service is the provision of temporary lodging through the owning or operating of
286 message switching or billing equipment solely for the purpose of providing at a charge
287 telecommunications services to its temporary patients or guests;

288 (e) Services provided by a private telecommunications system;

289 (f) Cable television service;

290 (g) The installation and maintenance of inside wire within a customer's premises;

291 (h) Electronic publishing services;

292 (i) Services provided pursuant to a broadcast radio or television license issued by the
293 Federal Communications Commission; or

294 (j) Interconnected voice over internet protocol service;

295 (55) "Telephone cooperative", every corporation defined as a telecommunications
296 company in this section, in which at least ninety percent of those persons and corporations
297 subscribing to receive local telecommunications service from the corporation own at least
298 ninety percent of the corporation's outstanding and issued capital stock and in which no
299 subscriber owns more than two shares of the corporation's outstanding and issued capital
300 stock;

301 (56) "Traffic aggregator", any person, firm, partnership or corporation which
302 furnishes a telephone for use by the public and includes, but is not limited to, telephones
303 located in rooms, offices and similar locations in hotels, motels, hospitals, colleges,
304 universities, airports and public or customer-owned pay telephone locations, whether or not
305 coin operated;

306 (57) "Transitionally competitive telecommunications company", an interexchange
307 telecommunications company which provides any noncompetitive or transitionally

308 competitive telecommunications service, except for an interexchange telecommunications
309 company which provides only noncompetitive telecommunications service;

310 (58) "Transitionally competitive telecommunications service", a telecommunications
311 service offered by a noncompetitive or transitionally competitive telecommunications
312 company and classified as transitionally competitive by the commission pursuant to section
313 392.361 or 392.370;

314 (59) "Water corporation" includes every corporation, company, association, joint
315 stock company or association, partnership and person, their lessees, trustees, or receivers
316 appointed by any court whatsoever, owning, operating, controlling or managing any plant or
317 property, dam or water supply, canal, or power station, distributing or selling for distribution,
318 or selling or supplying for gain any water;

319 (60) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes, headgates,
320 pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal
321 property, owned, operated, controlled or managed in connection with or to facilitate the
322 diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for
323 municipal, domestic or other beneficial use.

**393.1420. 1. This section shall be known and may be cited as the "Electrical
2 Corporation Broadband Authorization Act".**

3 2. As used in this section, the following terms shall mean:

**4 (1) "Broadband infrastructure", any and all component parts of an electrical
5 corporation's infrastructure that may be used to provide broadband infrastructure
6 services, whether now existing or that may be developed in the future, and including,
7 but not limited to, wires, copper cables, fiber optic cables, conduits, ducts, poles,
8 antennas, transmitters, receivers, amplifiers, switches, multiplexers, routers, servers,
9 and all appurtenances thereto;**

10 (2) "Broadband infrastructure services":

11 (a) The provision of access to dark fiber within fiber optic cables:

**12 a. To an end-use customer for the end-use customer's private
13 telecommunications system, provided that such access shall be provided at the
14 electrical corporation's premises and such end-use customer shall bear all costs and
15 responsibility for developing an interconnection from such end-use customer's premises
16 to the dark fiber at the electrical corporation's premises; or**

17 b. To a third party that does not use the fiber as an end-use customer; or

**18 (b) The provision of connectivity, via lit fiber or other components of the
19 broadband infrastructure, whether to a data or information transmission medium, or to
20 a technology, and in either case for purposes of accessing the internet or providing other
21 capabilities including, but not limited to, information sharing, information storage,**

22 **information content, or protocol conversion, provided, however, that the provision of**
23 **such connectivity shall only be made to a third party for resale and shall not be made to**
24 **an end-use customer of such connectivity;**

25 **(3) "Commission", the public service commission;**

26 **(4) "Electrical corporation", the same as defined in section 386.020.**

27 **3. (1) To the extent not otherwise authorized by law, and in addition to all other**
28 **purposes for which electrical corporations may be formed under the laws of this state**
29 **and all other powers and authority currently granted to electrical corporations under**
30 **the laws of this state, an electrical corporation shall be authorized to do any or all of the**
31 **following:**

32 **(a) Own, construct, install, maintain, repair, and replace broadband**
33 **infrastructure;**

34 **(b) Operate the electrical corporation's broadband infrastructure for or in**
35 **connection with the electrical corporation's provision of electric service;**

36 **(c) Provide broadband infrastructure services using the electrical corporation's**
37 **broadband infrastructure; and**

38 **(d) Subject to the provisions of section 416.031, enter into contracts, leases,**
39 **licenses, or other agreements concerning the provision of broadband infrastructure**
40 **services on any terms and conditions, including rates and charges, as the electrical**
41 **corporation in its sole discretion shall determine and, notwithstanding the provisions of**
42 **section 393.190 or any other law to the contrary, without securing any authorization,**
43 **permission, or approval from the commission.**

44 **(2) An electrical corporation shall not require any of its electric service**
45 **customers to purchase broadband infrastructure services provided via the electrical**
46 **corporation's broadband infrastructure as a condition of receiving or continuing to**
47 **receive electric service from the electrical corporation.**

48 **(3) An electrical corporation shall not disconnect any customer from receiving**
49 **electric service due to the customer's failure to pay for broadband infrastructure**
50 **services provided via the electrical corporation's broadband infrastructure.**

51 **(4) An electrical corporation shall require contributions in aid of construction**
52 **from any customer or third party to whom it provides broadband infrastructure**
53 **services, in the amount of the cost of any item of broadband infrastructure installed by**
54 **the electrical corporation to provide broadband infrastructure services solely to such**
55 **customer or third party.**

56 **4. (1) As used in this subsection, "broadband infrastructure services revenue"**
57 **shall mean revenue received by an electrical corporation for the provision of broadband**
58 **infrastructure services.**

59 **(2) When determining the revenue requirement used to set the electrical**
60 **corporation's base rates in the electrical corporation's general rate proceedings, the**
61 **following shall be included:**

62 **(a) The electrical corporation's test year broadband infrastructure services**
63 **revenues, as updated, trued-up, or normalized, if applicable;**

64 **(b) The electrical corporation's prudently-incurred test year operations and**
65 **maintenance expenditures associated with generating the revenues in paragraph (a) of**
66 **this subdivision, as updated, trued-up, or normalized, if applicable; and**

67 **(c) The electrical corporation's prudently-incurred investment in broadband**
68 **infrastructure as of the date the electrical corporation's other rate base additions are**
69 **accounted for.**

70

71 **The commission shall determine the prudence of the revenues, expenditures, and**
72 **investments covered by paragraphs (a) to (c) of this subdivision consistent with existing**
73 **law respecting the burdens of production and persuasion in general rate proceedings**
74 **applicable to utility expenditures and investments.**

75 **(3) Any ordinance adopted under section 71.520 or assent granted under section**
76 **229.100 shall also grant the electrical corporation the right to construct, install,**
77 **maintain, repair, and replace broadband infrastructure and the right to provide**
78 **broadband infrastructure services via the electrical corporation's broadband**
79 **infrastructure on and subject to the terms and conditions of such ordinance or assent.**

80 **5. Notwithstanding any provision of chapters 386 or 393 to the contrary, and**
81 **consistent with the authority and discretion granted to electrical corporations in**
82 **paragraph (d) of subdivision (1) of subsection 3 of this section, the commission shall not**
83 **have jurisdiction over the terms, conditions, charges, contracts, leases, licenses, or other**
84 **agreements of an electrical corporation for the electrical corporation's provision of**
85 **broadband infrastructure services.**

393.1800. 1. This section applies to any inverse condemnation or trespass cause
2 **of action, whether common law or statutory, brought against an electrical corporation,**
3 **against a rural electric cooperative operating under chapter 394, or against a**
4 **municipally owned or operated electric utility operating under chapter 91, where:**

5 **(1) The defendant has an easement in real property;**

6 **(2) The defendant uses the real property;**

7 **(3) The plaintiff alleges that the manner or extent of use by the defendant or the**
8 **defendant's assignees is an expanded use that increases the burden of the defendant's**
9 **easement, or that the use exceeds the scope of the defendant's easement rights;**

10 **(4) The use complained of involves the use of an electric plant for broadband**
11 **infrastructure services, or the use of electric transmission lines or systems in providing**
12 **access to broadband services; and**

13 **(5) The cause of action accrues after August 28, 2021.**

14 **2. Any cause of action for inverse condemnation described in subsection 1 of this**
15 **section shall be commenced within two years after the cause of action shall have accrued**
16 **and in default thereof be barred, and to the extent that any general statute of limitations**
17 **including, but not limited to, sections 516.010, 516.110, and 516.120; any special statute**
18 **of limitations; or the common law of this state would extend the two-year period for**
19 **commencing a cause of action for inverse condemnation described in subsection 1 of this**
20 **section, the common law and any such statutes of limitation are hereby superseded and**
21 **displaced.**

22 **3. Any cause of action for trespass described in subsection 1 of this section shall**
23 **be commenced within two years after the cause of action shall have accrued and in**
24 **default thereof be barred, and to the extent any general statute of limitations including,**
25 **but not limited to, sections 516.010, 516.110, and 516.120; any special statute of**
26 **limitations; or the common law of this state would extend the two-year period for**
27 **commencing a cause of action for trespass described in subsection 1 of this section, the**
28 **common law and any such statutes of limitation are hereby superseded and displaced.**

29 **4. In a cause of action for inverse condemnation described in subsection 1 of this**
30 **section, if the plaintiff prevails, the damage or taking shall be deemed permanent, the**
31 **injury to the plaintiff shall not be deemed to continue to accumulate or to accrue, and**
32 **the damages, past, present, and future, resulting therefrom, which shall always be**
33 **greater than zero, shall be fixed and determined as of the date the expanded use that**
34 **increased the burden of the defendant's easement or use that exceeded the scope of the**
35 **defendant's easement rights, initially occurred.**

36 **5. In a cause of action for trespass described in subsection 1 of this section, a**
37 **defendant shall be entitled to a determination by the court as to whether the use by the**
38 **defendant or its assignees, alleged by the plaintiff to be an expanded use that increases**
39 **the burden of the defendant's easement, or to exceed the scope of the defendant's**
40 **easement rights, is a public use; and:**

41 **(1) If the court finds that such use is a public use, and if the plaintiff prevails on**
42 **the claim for trespass:**

43 **(a) The plaintiff shall not be granted an order of ejectment;**

44 **(b) The plaintiff shall not be granted any equitable remedies; and**

45 **(c) The trespass shall be deemed permanent, the injury to the plaintiff shall not**
46 **be deemed to continue to accumulate or accrue, and the damages, past, present, and**

47 future, resulting therefrom, which shall always be greater than zero, and which may
48 include damages for physical damage to the property caused by the defendant's
49 wrongful use prior to suit, shall be fixed and determined as of the date the expanded use
50 that increased the burden of the defendant's easement rights or use that exceeded the
51 scope of the defendant's easement rights, initially occurred; or

52 (2) If the court finds such a use is not a public use, and if the plaintiff prevails on
53 the claim of trespass, nothing shall prevent a determination of whether such use is
54 permanent or temporary or prevent the plaintiff from pursuing remedies or relief not
55 available under the provisions of subdivision (1) of this subsection.

56 6. If a plaintiff prevails in a cause of action described in subsection 1 of this
57 section, the finder of fact shall make a determination as to whether the expanded use
58 that increased the burden of the defendant's easement or the use that exceeded the scope
59 of the defendant's easement rights did or did not occur outside of the footprint of the
60 defendant's easement. If the finder of fact finds such wrongful use did not occur outside
61 the footprint of the defendant's easement:

62 (1) The plaintiff shall not be entitled to, nor may the plaintiff be awarded, any
63 punitive damages;

64 (2) The plaintiff shall not be entitled to, nor may the plaintiff be awarded,
65 attorneys' fees, costs, or expenses, except as provided in subdivision (5) of this
66 subsection;

67 (3) The court may treble the damages awarded, if any, by the finder of fact for
68 physical damage to the property caused by the defendant's wrongful use prior to suit;

69 (4) Should the plaintiff prove to the court that such wrongful use by the
70 defendant has prevented the plaintiff from using a portion or portions of the plaintiff's
71 property lying exclusively within the footprint of the easement in substantially the same
72 manner as such portion or portions were being utilized immediately prior to the
73 wrongful use, then the court may increase the damages awarded to an amount not to
74 exceed the lesser of:

75 (a) Treble the damages awarded by the finder of fact; or

76 (b) The fair market value of the portion or portions of the plaintiff's property
77 lying exclusively within the footprint of the easement that the plaintiff has been
78 prevented, by the defendant's wrongful use, from using in substantially the same
79 manner as the portion or portions were being utilized immediately prior to such
80 wrongful use;

81 (5) In the alternative, and not in addition to subdivision (4) of this subsection,
82 should the plaintiff prove to the court that such wrongful use by the defendant has
83 prevented the plaintiff from using some portion or portions of the plaintiff's property

84 that does not lie exclusively within the footprint of the easement in substantially the
85 same manner as such portion or portions were being utilized immediately prior to the
86 wrongful use, the court may award the plaintiff reasonable attorneys' fees, costs, and
87 expenses.

88

89 Provided, however, with regard to subdivisions (4) and (5) of this subsection, if the
90 plaintiff seeks such damages but does not meet the burden of proof, upon motion by the
91 defendant, if the court finds the plaintiff's claim for such damages was factually
92 frivolous, the court may award the defendant its reasonable attorneys' fees, costs, and
93 expenses incurred in defending against such claim by the plaintiff.

94 7. To the extent the common law of this state or the provisions of any statute
95 including, but not limited to, section 523.283 and subdivision (11) of subsection 1 of
96 section 394.080, would entitle or permit a plaintiff prevailing in a cause of action
97 described in subsection 1 of this section to receive relief or damages or pursue a remedy
98 expressly prohibited in subsection 4, 5, or 6 of this section, the common law and any
99 such other statutes are hereby superseded and displaced.

100 8. As used in this section, the following terms mean:

101 (1) "Easement", includes express easements the terms of which have been
102 reduced to writing, whether acquired voluntarily or by condemnation, as well as
103 prescriptive easements, implied easements, and easements by estoppel;

104 (2) "Footprint", the area or areas described in an express easement within the
105 bounds of which the defendant easement holder may exercise easement rights granted,
106 including rights of access, or if the area or areas are not described in the express
107 easement or if the easement is other than an express easement, the area or areas the
108 locations and dimensions of which are determined by the court from evidence of the
109 prior uses of the easement by the defendant easement holder and determined by the
110 court to be reasonably necessary to accomplish the defendant easement holder's prior
111 uses;

112 (3) "Railroad corporation", the same as defined in section 388.010.

113 9. Upon the payment of an award of damages to a plaintiff who prevails in a
114 cause of action described in subsection 1 of this section for inverse condemnation, or
115 who prevails in a cause of action described in subsection 1 of this section for a trespass
116 where the court has determined that the expanded use that increased the burden of the
117 defendant's easement or the use that exceeded the scope of the defendant's easement
118 rights is a public use, the scope of the defendant's easement shall be permanently
119 expanded to include the uses that, prior to the payment, were found to have increased
120 the burden of the defendant's easement or exceeded the scope of the defendant's

121 easement rights, including leasing, licensing, or otherwise permitting or agreeing to the
122 uses by, another party; provided that thereafter, if the defendant in the exercise of its
123 expanded easement rights should cause physical damage to the property, the defendant
124 shall, at the defendant's option, either cause the property to be restored to the condition
125 it was in immediately prior to causing the physical damage or pay damages to the
126 property owner to compensate the property owner for such physical damage, except in
127 the event that the physical damage creates an immediate threat to life, property, or
128 safety, in which case the property owner may proceed to restore the property to its
129 condition prior to such damage and in which case the defendant shall be liable to the
130 property owner for the property owner's reasonably incurred expenses of restoration.

131 **10. Recognizing that individual characteristics of every parcel of land make**
132 **every parcel unique, incapable of duplication, and of particular value, such that the**
133 **damages awarded in any trespass or inverse condemnation involving real property shall**
134 **be determined on an individualized, parcel by parcel basis, no cause of action described**
135 **in subsection 1 of this section may be brought as an action on behalf of a class. The**
136 **limitation in this subsection is a substantive limitation and allowing a person to bring a**
137 **class action or other representative action would abridge, enlarge, or modify the**
138 **substantive rights addressed by this section.**

139 **11. In a cause of action described in subsection 1 of this section, the following**
140 **shall not be admissible in evidence, for purposes of determining the plaintiff's damages**
141 **or any other purpose:**

142 **(1) Profits, fees, or revenue derived by the defendant from uses by the defendant**
143 **or its assignees of the easement; and**

144 **(2) The rental value of the real property or of the easement, including the rental**
145 **value of an assembled utility corridor of any type.**

146 **12. This section is intended to advance the state's interest in facilitating and**
147 **accelerating citizens' access to broadband via the electrical system, on and over which**
148 **broadband infrastructure such as fiber optic cable, facilities, and technologies is already**
149 **deployed to enhance the reliability, resilience, and security of the electrical system, by**
150 **reducing the litigation risks involved when such broadband infrastructure is used for**
151 **such purposes, while at the same time protecting citizens' property rights.**

152 **13. To the extent the common law or statutes prohibit the condemnation of**
153 **property of a provider of public utility service or of a railroad corporation that is being**
154 **put to public use, nothing in this section shall abrogate or eliminate those prohibitions.**
155 **Further, nothing in this section shall abrogate or eliminate any obligation of an electrical**
156 **corporation, a rural electrical cooperative operating under chapter 394, or a**
157 **municipally-owned or operated electric utility operating under chapter 91, the scope**

158 **of whose easement rights are permanently expanded as described in subsection 9 of this**
159 **section, to comply with safety or permitting laws, regulations, existing contracts, or**
160 **standards required by the provider of the public utility service or railroad corporation**
161 **across whose property such expanded easement rights are obtained.**

523.010. 1. In case land, or other property, is sought to be appropriated by any road,
2 railroad, street railway, telephone, telegraph or any electrical corporation organized for the
3 manufacture, **distribution**, or transmission of electric current for light, heat, ~~or~~ power, **or by**
4 **any electrical corporation for the provision of broadband infrastructure services**,
5 including the construction, when that is the case, of necessary dams and appurtenant canals,
6 flumes, tunnels and tailraces and including the erection, when that is the case, of necessary
7 electric steam powerhouses, hydroelectric powerhouses, and electric substations or any oil,
8 pipeline or gas corporation engaged in the business of transporting or carrying oil, liquid
9 fertilizer solutions, or gas by means of pipes or pipelines laid underneath the surface of the
10 ground, or other corporation created under the laws of this state for public use, and such
11 corporation and the owners cannot agree upon the proper compensation to be paid, or in the
12 case the owner is incapable of contracting, be unknown, or be a nonresident of the state, such
13 corporation may apply to the circuit court of the county of this state where such land or any
14 part thereof lies by petition setting forth the general directions in which it is desired to
15 construct its road, railroad, street railway, telephone, or telegraph line or electric line,
16 including, when that is the case, the construction and maintenance of necessary dams and
17 appurtenant canals, tunnels, flumes and tailraces and, when that is the case, the appropriation
18 of land submerged by the construction of such dam, and including the erection and
19 maintenance, when that is the case, of necessary electric steam powerhouses, hydroelectric
20 powerhouses and electric substations, or oil, pipeline, liquid fertilizer solution pipeline, or gas
21 line over or underneath the surface of such lands, a description of the real estate, or other
22 property, which the company seeks to acquire; the names of the owners thereof, if known; or
23 if unknown, a pertinent description of the property whose owners are unknown and praying
24 the appointment of three disinterested residents of the county, as commissioners, or a jury, to
25 assess the damages which such owners may severally sustain in consequence of the
26 establishment, erection and maintenance of such road, railroad, street railway, telephone,
27 telegraph line, ~~or~~ electrical line, **or electrical corporation broadband infrastructure**
28 including damages from the construction and maintenance of necessary dams and the
29 condemnation of land submerged thereby, and the construction and maintenance of
30 appurtenant canals, flumes, tunnels and tailraces and the erection and maintenance of
31 necessary electric steam powerhouses, hydroelectric powerhouses and electric substations, or
32 oil, pipeline, or gas line over or underneath the surface of such lands; to which petition the
33 owners of any or all as the plaintiff may elect of such parcels as lie within the county or

34 circuit may be made parties defendant by names if the names are known, and by the
35 description of the unknown owners of the land therein described if their names are unknown.

36 2. If the proceedings seek to affect the lands of persons under conservatorship, the
37 conservators must be made parties defendant. If the present owner of any land to be affected
38 has less estate than a fee, the person having the next vested estate in remainder may at the
39 option of the petitioners be made party defendant; but if such remaindermen are not made
40 parties, their interest shall not be bound by the proceedings.

41 3. It shall not be necessary to make any persons party defendants in respect to their
42 ownership unless they are either in actual possession of the premises to be affected claiming
43 title or having a title of the premises appearing of record upon the proper records of the
44 county.

45 4. Except as provided in subsection 5 of this section, nothing in this chapter shall be
46 construed to give a public utility, as defined in section 386.020, or a rural electric cooperative,
47 as provided in chapter 394, the power to condemn property which is currently used by another
48 provider of public utility service, including a municipality or a special purpose district, when
49 such property is used or useful in providing utility services, if the public utility or cooperative
50 seeking to condemn such property, directly or indirectly, will use or proposes to use the
51 property for the same purpose, or a purpose substantially similar to the purpose for which the
52 property is being used by the provider of the public utility service.

53 5. A public utility or a rural electric cooperative may only condemn the property of
54 another provider of public utility service, even if the property is used or useful in providing
55 utility services by such provider, if the condemnation is necessary for the public purpose of
56 acquiring a nonexclusive easement or right-of-way across the property of such provider and
57 only if the acquisition will not materially impair or interfere with the current use of such
58 property by the utility or cooperative and will not prevent or materially impair such provider
59 of public utility service from any future expansion of its facilities on such property.

60 6. If a public utility or rural electric cooperative seeks to condemn the property of
61 another provider of public utility service, and the conditions in subsection 4 of this section do
62 not apply, this section does not limit the condemnation powers otherwise possessed by such
63 public utility or rural electric cooperative.

64 7. Suits in inverse condemnation or involving dangerous conditions of public
65 property against a municipal corporation established under Article VI, Section 30(a) of the
66 Missouri Constitution shall be brought only in the county where such land or any part thereof
67 lies.

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