

HOUSE BILL No. 2450

By Representative Sloan

1-10

1 AN ACT concerning advanced telecommunications services; relating to
2 collocation of broadband equipment; relating to public right-of-way
3 utility facilities; amending K.S.A. 2017 Supp. 17-1902 and repealing
4 the existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) As used in this section:

8 (1) "Broadband equipment" means any advanced telecommunications
9 equipment or facilities, including all changes, modifications and
10 expansions to existing equipment or facilities that are necessary to support
11 the delivery of broadband service.

12 (2) "Broadband service" means a retail service that utilizes
13 infrastructure with the capacity to transmit data to enable a subscriber to
14 the service to originate and receive high-quality voice, data, graphics and
15 video, without regard to delivery technology and that:

16 (A) Is capable of minimum download speeds of at least 25 megabits
17 per second and minimum upload speeds of at least three megabits per
18 second;

19 (B) provides an average latency of less than 100 milliseconds to
20 enable the use of real-time communications; and

21 (C) provides subscribers with a minimum monthly data allowance of
22 150 gigabytes per month.

23 (3) "Broadband service provider" means an entity that provides
24 broadband service to persons domiciled in this state except that the term
25 "broadband service provider" shall not include an entity that qualifies as a
26 "wireless infrastructure provider" or a "wireless services provider"
27 pursuant to the provisions of K.S.A. 2017 Supp. 66-2019, and amendments
28 thereto.

29 (4) "Collocate" means the mounting or installation of broadband
30 equipment on a utility facility located in the public right-of-way for the
31 purpose of providing broadband service.

32 (5) "Municipality" means any city, county or township of the state.

33 (6) "Public right-of-way" means only the area of real property in
34 which the state or a municipality has a dedicated or acquired right-of-way
35 interest in the real property. It shall include the area on, below or above the
36 present and future streets, alleys, avenues, roads, highways, parkways or

1 boulevards dedicated or acquired as a right-of-way. The term does not
 2 include the airwaves above a right-of-way with regard to wireless
 3 telecommunications or other non-wire telecommunications or broadcast
 4 service, easements obtained by utilities or private easements in platted
 5 subdivisions or tracts.

6 (7) "Reasonable compensation" means any compensation that is
 7 mutually agreed to by the broadband service provider and an owner of a
 8 utility facility or is the amount of compensation as determined by the state
 9 corporation commission pursuant to subsection (c).

10 (8) "Utility facility" means any structure owned or operated by a
 11 public utility as defined in K.S.A. 66-104, and amendments thereto, a
 12 municipality as defined in K.S.A. 75-6102, and amendments thereto, or an
 13 electric cooperative as defined in K.S.A. 17-4652, and amendments
 14 thereto, that is designed specifically for and used to carry lines, cables or
 15 wires for telecommunications, cable, electricity or to provide lighting.

16 (b) Notwithstanding the provisions of K.S.A. 17-1902, and
 17 amendments thereto, a broadband service provider shall have the right to
 18 collocate broadband equipment on any utility facility located in the public
 19 right-of-way as long as:

20 (1) The physical integrity of the utility facility is not impaired as
 21 determined by the state corporation commission pursuant to subsection (c);
 22 and

23 (2) the broadband service provider provides reasonable compensation
 24 to the owner of the structure for the collocation of broadband equipment. If
 25 the parties are not able to mutually agree to an amount of reasonable
 26 compensation, the state corporation commission shall issue a
 27 determination setting forth the reasonable compensation to be paid to the
 28 owner of the utility facility for the collocation of broadband equipment.

29 (c) The state corporation commission shall adopt rules and
 30 regulations regarding whether collocation of broadband equipment would
 31 impair the physical integrity of a utility facility. The state corporation
 32 commission may adopt any other rules and regulations to implement the
 33 provisions of this section.

34 Sec. 2. K.S.A. 2017 Supp. 17-1902 is hereby amended to read as
 35 follows: 17-1902. (a) (1) "Public right-of-way" means only the area of real
 36 property in which the city has a dedicated or acquired right-of-way interest
 37 in the real property. It shall include the area on, below or above the present
 38 and future streets, alleys, avenues, roads, highways, parkways or
 39 boulevards dedicated or acquired as right-of-way. The term does not
 40 include the airwaves above a right-of-way with regard to wireless
 41 telecommunications or other nonwire telecommunications or broadcast
 42 service, easements obtained by utilities or private easements in platted
 43 subdivisions or tracts.

1 (2) "Provider" means a local exchange carrier as defined in K.S.A.
2 66-1,187(h), and amendments thereto, or a telecommunications carrier as
3 defined in K.S.A. 66-1,187(m), and amendments thereto, or a video
4 service provider as defined in K.S.A. 2017 Supp. 12-2022, and
5 amendments thereto, but does not include an applicant as defined in
6 K.S.A. 2017 Supp. 66-2019, and amendments thereto, *or a broadband*
7 *service provider as defined in section 1, and amendments thereto.*

8 (3) "Telecommunications services" means providing the means of
9 transmission, between or among points specified by the user, of
10 information of the user's choosing, without change in the form or content
11 of the information as sent and received.

12 (4) "Competitive infrastructure provider" means an entity which
13 leases, sells or otherwise conveys facilities located in the right-of-way, or
14 the capacity or bandwidth of such facilities for use in the provision of
15 telecommunications services, internet services or other intrastate and
16 interstate traffic, but does not itself provide services directly to end users
17 within the corporate limits of the city.

18 (b) Any provider shall have the right pursuant to this act to construct,
19 maintain and operate poles, conduit, cable, switches and related
20 appurtenances and facilities along, across, upon and under any public
21 right-of-way in this state. Such appurtenances and facilities shall be so
22 constructed and maintained as not to obstruct or hinder the usual travel or
23 public safety on such public ways or obstruct the legal use by other
24 utilities.

25 (c) Nothing in this act shall be interpreted as granting a provider the
26 authority to construct, maintain or operate any facility or related
27 appurtenance on property owned by a city outside of the public right-of-
28 way.

29 (d) The authority of a provider to use and occupy the public right-of-
30 way shall always be subject and subordinate to the reasonable public
31 health, safety and welfare requirements and regulations of the city. A city
32 may exercise its home rule powers in its administration and regulation
33 related to the management of the public right-of-way provided that any
34 such exercise must be competitively neutral and may not be unreasonable
35 or discriminatory. Nothing herein shall be construed to limit the authority
36 of cities to require a competitive infrastructure provider to enter into a
37 contract franchise ordinance.

38 (e) The city shall have the authority to prohibit the use or occupation
39 of a specific portion of public right-of-way by a provider due to a
40 reasonable public interest necessitated by public health, safety and welfare
41 so long as the authority is exercised in a competitively neutral manner and
42 is not unreasonable or discriminatory. A reasonable public interest shall
43 include the following:

1 (1) The prohibition is based upon a recommendation of the city
2 engineer, is related to public health, safety and welfare and is
3 nondiscriminatory among providers, including incumbent providers;

4 (2) the provider has rejected a reasonable, competitively neutral and
5 nondiscriminatory justification offered by the city for requiring an
6 alternate method or alternate route that will result in neither unreasonable
7 additional installation expense nor a diminution of service quality;

8 (3) the city reasonably determines, after affording the provider
9 reasonable notice and an opportunity to be heard, that a denial is necessary
10 to protect the public health and safety and is imposed on a competitively
11 neutral and nondiscriminatory basis; or

12 (4) the specific portion of the public right-of-way for which the
13 provider seeks use and occupancy is environmentally sensitive as defined
14 by state or federal law or lies within a previously designated historic
15 district as defined by local, state or federal law.

16 (f) A provider's request to use or occupy a specific portion of the
17 public right-of-way shall not be denied without reasonable notice and an
18 opportunity for a public hearing before the city governing body. A city
19 governing body's denial of a provider's request to use or occupy a specific
20 portion of the public right-of-way may be appealed to a district court.

21 (g) A provider shall comply with all laws and rules and regulations
22 governing the use of public right-of-way.

23 (h) A city may not impose the following regulations on providers:

24 (1) Requirements that particular business offices or other
25 telecommunications facilities be located in the city;

26 (2) requirements for filing applications, reports and documents that
27 are not reasonably related to the use of a public right-of-way or this act;

28 (3) requirements for city approval of transfers of ownership or control
29 of the business or assets of a provider's business, except that a city may
30 require that such entity maintain current point of contact information and
31 provide notice of a transfer within a reasonable time; and

32 (4) requirements concerning the provisioning of or quality of
33 customer services, facilities, equipment or goods in-kind for use by the
34 city, political subdivision or any other provider or public utility.

35 (i) Unless otherwise required by state law, in the exercise of its lawful
36 regulatory authority, a city shall promptly, and in no event more than 30
37 days, with respect to facilities in the public right-of-way, process each
38 valid and administratively complete application of a provider for any
39 permit, license or consent to excavate, set poles, locate lines, construct
40 facilities, make repairs, effect traffic flow, obtain zoning or subdivision
41 regulation approvals, or for other similar approvals, and shall make
42 reasonable effort not to unreasonably delay or burden that provider in the
43 timely conduct of its business. The city shall use its best reasonable efforts

1 to assist the provider in obtaining all such permits, licenses and other
2 consents in an expeditious and timely manner.

3 (j) If there is an emergency necessitating response work or repair, a
4 provider may begin that repair or emergency response work or take any
5 action required under the circumstances, provided that the provider
6 notifies the affected city promptly after beginning the work and timely
7 thereafter meets any permit or other requirement had there not been such
8 an emergency.

9 (k) A city may require a provider to repair all damage to a public
10 right-of-way caused by the activities of that provider, or of any agent
11 affiliate, employee, or subcontractor of that provider, while occupying,
12 installing, repairing or maintaining facilities in a public right-of-way and
13 to return the right-of-way to its functional equivalence before the damage
14 pursuant to the reasonable requirements and specifications of the city. If
15 the provider fails to make the repairs required by the city, the city may
16 effect those repairs and charge the provider the cost of those repairs. If a
17 city incurs damages as a result of a violation of this subsection, then the
18 city shall have a cause of action against a provider for violation of this
19 subsection, and may recover its damages, including reasonable attorney
20 fees, if the provider is found liable by a court of competent jurisdiction.

21 (l) If requested by a city, in order to accomplish construction and
22 maintenance activities directly related to improvements for the health,
23 safety and welfare of the public, a provider shall promptly remove its
24 facilities from the public right-of-way or shall relocate or adjust its
25 facilities within the public right-of-way at no cost to the political
26 subdivision. Such relocation or adjustment shall be completed as soon as
27 reasonably possible within the time set forth in any request by the city for
28 such relocation or adjustment. Any damages suffered by the city or its
29 contractors as a result of such provider's failure to timely relocate or adjust
30 its facilities shall be borne by such provider.

31 (m) No city shall create, enact or erect any unreasonable condition,
32 requirement or barrier for entry into or use of the public rights-of-way by a
33 provider.

34 (n) A city may assess any of the following fees against a provider, for
35 use and occupancy of the public right-of-way, provided that such fees
36 reimburse the city for its reasonable, actual and verifiable costs of
37 managing the city right-of-way, and are imposed on all such providers in a
38 nondiscriminatory and competitively neutral manner:

39 (1) A permit fee in connection with issuing each construction permit
40 to set fixtures in the public right-of-way within that city as provided in
41 K.S.A. 17-1901, and amendments thereto, to compensate the city for
42 issuing, processing and verifying the permit application;

43 (2) an excavation fee for each street or pavement cut to recover the

1 costs associated with construction and repair activity of the provider, their
2 assigns, contractors or subcontractors, or both, with the exception of
3 construction and repair activity required pursuant to subsection (l) of this
4 act related to construction and maintenance activities directly related to
5 improvements for the health, safety and welfare of the public; ~~provided,~~
6 ~~however~~ *except that*, imposition of such excavation fee must be based
7 upon a regional-specific or other appropriate study establishing the basis
8 for such costs which takes into account the life of the city street prior to
9 the construction or repair activity and the remaining life of the city street.
10 Such excavation fee is expressly limited to activity that results in an actual
11 street or pavement cut;

12 (3) inspection fees to recover all reasonable costs associated with city
13 inspection of the work of the provider in the right-of-way;

14 (4) repair and restoration costs associated with repairing and restoring
15 the public right-of-way because of damage caused by the provider, its
16 assigns, contractors or subcontractors, or both, in the right-of-way; and

17 (5) a performance bond, in a form acceptable to the city, from a
18 surety licensed to conduct surety business in the state of Kansas, insuring
19 appropriate and timely performance in the construction and maintenance
20 of facilities located in the public right-of-way.

21 (o) A city may not assess any additional fees against providers for use
22 or occupancy of the public right-of-way other than those specified in
23 subsection (n).

24 (p) This act may not be construed to affect any valid taxation of a
25 provider's facilities or services.

26 (q) Providers shall indemnify and hold the city and its officers and
27 employees harmless against any and all claims, lawsuits, judgments, costs,
28 liens, losses, expenses, fees to include reasonable attorney fees and costs
29 of defense, proceedings, actions, demands, causes of action, liability and
30 suits of any kind and nature, including personal or bodily injury or death,
31 property damage or other harm for which recovery of damages is sought,
32 to the extent that it is found by a court of competent jurisdiction to be
33 caused by the negligence of the provider, any agent, officer, director,
34 representative, employee, affiliate or subcontractor of the provider, or their
35 respective officers, agents, employees, directors or representatives, while
36 installing, repairing or maintaining facilities in a public right-of-way. The
37 indemnity provided by this subsection does not apply to any liability
38 resulting from the negligence of the city, its officers, employees,
39 contractors or subcontractors. If a provider and the city are found jointly
40 liable by a court of competent jurisdiction, liability shall be apportioned
41 comparatively in accordance with the laws of this state without, however,
42 waiving any governmental immunity available to the city under state law
43 and without waiving any defenses of the parties under state or federal law.

1 This section is solely for the benefit of the city and provider and does not
2 create or grant any rights, contractual or otherwise, to any other person or
3 entity.

4 (r) A provider or city shall promptly advise the other in writing of any
5 known claim or demand against the provider or the city related to or
6 arising out of the provider's activities in a public right-of-way.

7 (s) Nothing contained in K.S.A. 17-1902, and amendments thereto, is
8 intended to affect the validity of any franchise fees collected pursuant to
9 state law or a city's home rule authority.

10 (t) Any ordinance enacted prior to the effective date of this act
11 governing the use and occupancy of the public right-of-way by a provider
12 shall not conflict with the provisions of this act.

13 Sec. 3. K.S.A. 2017 Supp. 17-1902 is hereby repealed.

14 Sec. 4. This act shall take effect and be in force from and after its
15 publication in the statute book.