

HOUSE BILL No. 2451

By Representative Sloan

1-10

1 AN ACT concerning broadband; enacting the statewide broadband
2 deployment authorization act.

3

4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Sections 1 through 5, and amendments thereto, shall be
6 known and may be cited as the statewide broadband deployment
7 authorization act.

8 (b) The purpose of this act is to encourage the deployment of
9 advanced telecommunications capability throughout rural Kansas by
10 promoting competition in the local telecommunications market and
11 removing barriers to infrastructure investment.

12 Sec. 2. As used in the statewide broadband deployment authorization
13 act:

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

18 (1) Is capable of minimum download speeds of at least 25 megabits
19 per second and minimum upload speeds of at least three megabits per
20 second;

21 (2) provides an average latency of less than 100 milliseconds to
22 enable the use of real-time communications; and

23 (3) provides subscribers with a minimum monthly data allowance of
24 150 gigabytes per month.

25 (b) "Franchise" means an initial authorization, or renewal of an
26 authorization, issued by a local government, regardless of whether the
27 authorization is designed as a franchise, permit, license, resolution,
28 contract, certificate, agreement or otherwise, that authorizes the
29 construction and operation of a broadband system.

30 (c) "Local government" means any county that is a rural area, or any
31 city or township located within such county.

32 (d) "Rural area" means a county with an average population density
33 of less than 100 persons per square mile, excluding the county seat, and
34 that is either:

35 (1) Not served by any broadband service provider; or

36 (2) served by a broadband service provider, but less than 10% of the

1 persons in such county have access to broadband service.

2 (e) "Rural broadband service authorization" means the right of a
3 broadband service provider to offer broadband service to any subscriber in
4 any rural area in the state of Kansas.

5 (f) "Rural broadband service provider" means an entity that offers
6 broadband service in a rural area to persons who are domiciled in such
7 rural area and is not a video service provider or cable operator as such
8 terms are defined in K.S.A. 2017 Supp. 12-2022, and amendments thereto.

9 (g) "Rural broadband service provider fee" means the fee imposed
10 upon broadband service providers pursuant to section 4, and amendments
11 thereto.

12 Sec. 3. (a) An entity or person seeking to provide broadband service
13 in a rural area of this state on or after July 1, 2018, shall file an application
14 for a state-issued rural broadband service authorization with the state
15 corporation commission as required by this section. The state corporation
16 commission shall promulgate regulations to govern the state-issued rural
17 broadband service authorization application process. The state, through the
18 state corporation commission, shall issue a rural broadband service
19 authorization permitting a broadband service provider to provide
20 broadband service in any rural area of the state of Kansas, or amend a rural
21 broadband service authorization previously issued, within 30 calendar days
22 after receipt of a completed affidavit submitted by the broadband service
23 applicant and signed by an officer or general partner of the applicant
24 affirming:

25 (1) The location of the applicant's principal place of business and the
26 names of the applicant's principal executive officers;

27 (2) that the applicant has filed or will timely file with the federal
28 communications commission all forms required by that agency in advance
29 of offering broadband service in this state;

30 (3) that the applicant agrees to comply with all applicable federal and
31 state statutes and regulations;

32 (4) that the applicant agrees to comply with all lawful and applicable
33 local government regulations regarding the use and occupation of public
34 rights-of-way in the delivery of the broadband service, including the police
35 powers of the local governments in which the service is delivered;

36 (5) the description of the service area footprint to be served within
37 any rural area within the state of Kansas, including any local governments
38 or parts thereof. Such description shall be updated by the applicant prior to
39 the expansion of broadband service to a previously undesignated rural
40 service area and, upon such expansion, give notice to the state corporation
41 commission of the rural service area to be served by the applicant,
42 including:

43 (A) The period of time it shall take the applicant to become capable

1 of providing broadband service to all households in the applicant's rural
2 service area footprint, which may not exceed five years from the date the
3 authorization, or amended authorization, is issued; and

4 (B) a general description of the type or types of technologies the
5 applicant will use to provide broadband service to all households in its
6 rural service area footprint, which may include wireline, wireless, satellite
7 or any other technology.

8 (b) The certificate of rural broadband service authorization issued by
9 the state corporation commission shall contain:

10 (1) A grant of authority to provide broadband service in any rural area
11 as requested in the application; and

12 (2) a statement that the grant of authority is subject to lawful
13 operation of the broadband service by the applicant or its successor in
14 interest.

15 (c) The certificate of rural broadband service authorization issued by
16 the state corporation commission is fully transferable to any successor in
17 interest to the applicant to which it is initially granted. A notice of transfer
18 shall be filed with the state corporation commission and any relevant
19 municipality within 30 business days of the completion of such transfer.

20 (d) The certificate of rural broadband service authorization issued by
21 the state corporation commission may be terminated by the broadband
22 service provider by submitting notice to the state corporation commission.

23 (e) Only the state of Kansas shall constitute the exclusive franchising
24 authority for rural broadband service providers in the state of Kansas.

25 (f) The holder of a state-issued rural broadband service authorization
26 shall not be required to comply with any mandatory facility build-out
27 provisions nor provide broadband service to any customer using any
28 specific technology. Additionally, no local government of the state may:

29 (1) Require a rural broadband service provider to obtain a separate
30 franchise to provide broadband service in any other rural area in the state;

31 (2) impose any fee, license or gross receipts tax on rural broadband
32 service providers, other than the fee specified in section 4(b) through (e),
33 and amendments thereto;

34 (3) impose any provision regulating rates charged by rural broadband
35 service providers; or

36 (4) impose any other franchise or service requirements or conditions
37 on rural broadband service providers, except that a rural broadband service
38 provider must submit the agreement specified in section 4(a), and
39 amendments thereto.

40 (g) A rural broadband service provider that provides broadband
41 service pursuant to a franchise issued by a local government in effect on or
42 before July 1, 2018, shall comply with the terms and conditions of such
43 franchise until such franchise expires, is terminated pursuant to its terms or

1 until the franchise is modified as provided in this section.

2 (h) A rural broadband service provider may not deny access to service
3 to any group of potential residential subscribers because of the income of
4 the residents in the local area in which such group resides.

5 (i) Within 180 days of providing broadband service in a service area,
6 the rural broadband service provider shall implement a process for
7 receiving requests for the extension of broadband service to customers
8 who reside in such service area, but for which broadband service is not yet
9 available from the provider to the residences of the requesting customers.
10 Within 30 days of receipt, a rural broadband service provider shall respond
11 to such requests as it deems appropriate and may provide information to
12 the requesting customer about its broadband services and any potential
13 timelines for the extension of broadband service to the customers in the
14 service area.

15 (j) A state-issued rural broadband service authorization shall be
16 construed to authorize the construction of a broadband system over public
17 rights-of-way and through easements that are within the service area of a
18 broadband service provider with a state-issued broadband service
19 authorization.

20 Sec. 4. (a) A rural broadband service provider shall provide notice to
21 each local government at least 30 calendar days before providing
22 broadband service in the local government's jurisdiction. Within 30 days of
23 the time notice is delivered to the local government, the rural broadband
24 service provider shall execute an agreement substantially similar to the
25 following, which shall be filed with the city or county clerk and shall be
26 effective immediately:

27 "[Broadband Service Provider] was granted authorization by the state
28 of Kansas to provide broadband service in [City or County] on [date] and
29 hereby executes this agreement with [City or County]. [Broadband Service
30 Provider] will begin providing broadband service in [City or County] on or
31 after [date]. [Broadband Service Provider] may be contacted by the [City
32 or County] at the following telephone number _____. [Broadband
33 Service Provider] may be contacted by customers at the following
34 telephone number _____. [Broadband Service Provider] agrees to
35 update this contact information with [City or County] within 15 calendar
36 days in the event that such contact information changes. [Broadband
37 Service Provider] acknowledges and agrees to comply with [City's or
38 County's] local right-of-way ordinance to the extent the ordinance is
39 applicable to [Broadband Service Provider] and not contrary to state and
40 federal laws and regulations. [Broadband Service Provider] hereby
41 reserves the right to challenge the lawfulness or applicability of such
42 ordinance to [Broadband Service Provider]. By entering into this
43 agreement, neither the [City's or County's] nor [Broadband Service

1 Provider's] present or future legal rights, positions, claims, assertions or
2 arguments before any administrative agency or court of law are in any way
3 prejudiced or waived. By entering into the agreement, neither the [City or
4 County] nor [Broadband Service Provider] waive any rights, but instead
5 expressly reserve any and all rights, remedies and arguments the [City or
6 County] or [Broadband Service Provider] may have at law or equity,
7 without limitation, to argue, assert and/or take any position as to the
8 legality or appropriateness of any present or future laws, ordinances and/or
9 rulings."

10 (b) In any local government in which a rural broadband service
11 provider offers broadband service, the broadband service provider shall
12 calculate and pay the broadband service provider fee to the local
13 government upon such local government's written request. If the local
14 government makes such a request, the broadband service provider fee shall
15 be due on a quarterly basis and shall be calculated as a percentage of gross
16 revenues, as defined herein. Notwithstanding the date the local
17 government makes such a request, no broadband service provider fee shall
18 be applicable until the first day of a calendar month that is at least 30 days
19 after written notice of the levy is submitted by the local government to
20 such rural broadband service provider. The local government may not
21 demand the use of any other calculation method. Any rural broadband
22 service provider fee shall be remitted to the local government by the
23 broadband service provider not later than 45 days after the end of the
24 quarter.

25 (c) The percentage to be applied against gross revenues pursuant to
26 subsection (b) shall be set by the local government and identified in its
27 written request, but may in no event exceed 5%.

28 (d) Gross revenues are limited to amounts billed to and collected
29 from broadband service subscribers for the following:

- 30 (1) Recurring charges for broadband service;
- 31 (2) event-based charges for broadband service, including additional
32 bandwidth charges;
- 33 (3) rental of broadband service equipment;
- 34 (4) service charges related to the provision of broadband service,
35 including, but not limited to, activation, installation, repair and
36 maintenance charges; and
- 37 (5) administrative charges related to the provision of broadband
38 service, including, but not limited to, service order and service termination
39 charges.

40 (e) Gross revenues do not include:

- 41 (1) Uncollectible fees, provided that all or part of uncollectible fees
42 that are written off as bad debt but subsequently collected, less expenses of
43 collection, shall be included in gross revenues in the period collected;

1 (2) late payment fees;

2 (3) amounts billed to broadband service subscribers to recover taxes,
3 fees or surcharges imposed upon broadband service subscribers in
4 connection with the provision of broadband service, including the
5 broadband service provider fee authorized by this section; or

6 (4) charges, other than those described in subsection (d), that are
7 aggregated or bundled with amounts billed to broadband service
8 subscribers.

9 (f) The local government may perform an annual audit of the
10 broadband service provider's calculation of the rural broadband service
11 provider fee.

12 (g) Any rural broadband service provider may identify and collect the
13 amount of the rural broadband service provider fee as a separate line item
14 on the regular bill of each subscriber.

15 Sec. 5. (a) The state corporation commission shall:

16 (1) Assess the costs of any proceeding before the commission
17 pursuant to the rural broadband franchise act against the parties to the
18 proceeding; and

19 (2) establish and collect fees from entities and persons filing
20 applications with the state corporation commission for state-issued rural
21 broadband service authorizations, which fees shall be in amounts sufficient
22 to pay the costs of administration of the rural broadband franchise act,
23 including costs of personnel.

24 (b) The state corporation commission shall remit all moneys received
25 by the commission pursuant to this section to the state treasurer in
26 accordance with the provisions of K.S.A. 75-4215, and amendments
27 thereto. Upon receipt of the remittance, the state treasurer shall deposit the
28 entire amount in the state treasury and credit it to the public service
29 regulation fund.

30 Sec. 6. This act shall take effect and be in force from and after its
31 publication in the statute book.