

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3093

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FOSTER AND FRICH

[Introduced March 14, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to repeal §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-6, §31-
2 15C-7, §31-15C-8, §31-15C-9, §31-15C-12 and §31-15C-13 of the Code of West Virginia,
3 1931, as amended; and to amend said code by adding thereto a new chapter, designated
4 §31G-1-1, §31G-1-2, §31G-1-3, §31G-1-4, §31G-1-5, §31G-1-6, §31G-1-7, §31G-1-8,
5 §31G-1-9, §31G-1-10, §31G-1-11, §31G-1-12, §31G-1-13; §31G-1-14, §31G-2-1, §31G-
6 2-2, §31G-2-3, §31G-2-4, §31G-2-5, §31G-2-6, §31G-2-7, §31G-2-8, §31G-2-9, §31G-2-
7 10, §31G-2-11, §31G-2-12, §31G-2-13; §31G-2-14, §31G-2-15, §31G-2-16, §31G-2-17,
8 §31G-2-18, §31G-2-19, §31G-2-20, §31G-2-21, §31G-2-22, §31G-2-23, §31G-2-24,
9 §31G-2-25, §31G-2-26, §31G-2-27; §31G-2-28, §31G-3-1, §31G-3-2, §31G-4-1, §31G-4-
10 2, §31G-4-3, §31G-5-1 and §31G-5-2, all relating to establishing Broadband
11 Enhancement and Expansion Policies; re-establishing the Broadband Enhancement
12 Council; defining terms; revising council powers and duties; directing council to publish an
13 annual assessment and map of broadband in the state; authorizing council to create an
14 interactive map of broadband services; revising terms for retention of expert consultants;
15 authorizing collection of data by council; authorizing creation of guideline and
16 recommendation to the Legislature for pilot project for municipalities and counties to form
17 non-profit cooperative associations for internet services; authorizing creation of guideline
18 and recommendation to the Legislature for voluntary pipeline donation program to facilitate
19 broadband services; authorizing creation of guideline and recommendation to the
20 Legislature for easement program to facilitate broadband services; authorizing council to
21 seek, utilize and dispense non-state funding and grants; providing for legislative
22 rulemaking authority; authorizing formation of cooperative associations for internet
23 services; providing for who may organize a cooperative association; defining terms; setting
24 forth legislative findings and purpose; establishing the powers of such associations; setting
25 forth all conditions, rights and responsibilities of such cooperative associations; declaring
26 that cooperative association not deemed a restraint in trade; providing for the application

27 of corporation laws; providing for microtrenching; defining terms; providing for make-ready
 28 pole access; defining terms; setting forth procedure for attaching items to third-party
 29 facilities and poles; providing for exceptions to make-ready pole access; prohibiting
 30 internet service providers from advertising or including as a contract term the downstream
 31 data rate or upstream data rate service solely in terms of the maximum anticipated data
 32 rate or as an “up to” speed; authorizing advertisement or contracting in terms of minimum
 33 data speeds; declaring violation to be an unfair or deceptive act or practice; and
 34 authorizing enforcement and remedy under the Consumer Credit and Protection Act.

Be it enacted by the Legislature of West Virginia:

1 That §31-15C-1, §31-15C-2, §31-15C-3, §31-15C-4, §31-15C-5, §31-15C-6, §31-15C-7,
 2 §31-15C-8, §31-15C-9, §31-15C-12 and §31-15C-13 of the Code of West Virginia, 1931, as
 3 amended, be repealed; and that said code be amended by adding thereto a new chapter,
 4 designated §31G-1-1, §31G-1-2, §31G-1-3, §31G-1-4, §31G-1-5, §31G-1-6, §31G-1-7, §31G-1-
 5 8, §31G-1-9, §31G-1-10, §31G-1-11, §31G-1-12, §31G-1-13; §31G-1-14, §31G-2-1, §31G-2-2,
 6 §31G-2-3, §31G-2-4, §31G-2-5, §31G-2-6, §31G-2-7, §31G-2-8, §31G-2-9, §31G-2-10, §31G-2-
 7 11, §31G-2-12, §31G-2-13; §31G-2-14, §31G-2-15, §31G-2-16, §31G-2-17, §31G-2-18, §31G-2-
 8 19, §31G-2-20, §31G-2-21, §31G-2-22, §31G-2-23, §31G-2-24, §31G-2-25, §31G-2-26, §31G-2-
 9 27; §31G-2-28, §31G-3-1, §31G-3-2, §31G-4-1, §31G-4-2, §31G-4-3, §31G-5-1 and §31G-5-2,
 10 all to read as follows:

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION

POLICIES

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-1. Legislative findings and purpose.

1 The Legislature finds as follows:

2 (1) That it is a primary goal of the Governor, the Legislature and the citizens of this state,

3 by the year 2020, to make every municipality, community, and rural area in this state, border to
4 border, accessible to Internet communications through the expansion, extension and general
5 availability of broadband services and technology.

6 (2) That although market-driven deployment has extended broadband access to most of
7 West Virginia's cities, towns, and other concentrated population areas, some areas of the state,
8 mostly rural, remain unserved.

9 (3) That based upon the same network principles that providers of telephony services
10 have faced since the inception of the telecommunications industry, rising fixed costs and
11 technological limitations prohibit broadband networks from being extended into rural areas where
12 the level of demand in sparsely populated areas may not justify the required costs of construction.

13 (4) That the unique topography and demography of this state that hinders the provision of
14 broadband access to rural areas of the state specifically disadvantages the elderly and low-
15 income households that are the least likely to own computers or subscribe to Internet service. In
16 light of these topographical and demographic challenges, any attempt to fill the gaps in West
17 Virginia's broadband availability must be organized according to the levels of demand in the
18 various unserved areas to which service is sought to be extended.

19 (5) That, in particular, fair and equitable access to twenty-first century technology that will
20 maximize the functionality of educational resources and educational facilities that are conducive
21 to enabling our children to be exposed to and to receive the best of future teaching and learning
22 is absolutely essential to this state. A quality educational system of the twenty-first century should
23 have access to the best technology tools and processes. Administrators should have, among
24 other things, the electronic resources to monitor student performance, to manage data, and to
25 communicate effectively. In the classroom, every teacher in every school should be provided with
26 online access to educational technology resources and the ability to deliver content standard and
27 objectives to the students of West Virginia. Schools of the twenty-first century require facilities
28 that accommodate changing technologies and twenty-first century instructional processes.

29 (6) Accordingly, it is the purpose of the Legislature to provide for the development of
30 policies, plans, processes and procedures to be employed and dedicated to extending broadband
31 access to West Virginians, and to their families, by stimulating demand for those services and for
32 encouraging and facilitating the construction of the necessary infrastructure to meet their needs
33 and demands.

§31G-1-2. Definitions.

1 For the purposes of this article:

2 (1) “Broadband” or “broadband service” means any service providing advanced
3 telecommunications capability with the same downstream data rate and upstream data rate as is
4 specified by the Federal Communications Commission and that does not require the end-user to
5 dial up a connection that has the capacity to always be on, and for which the transmission speeds
6 are based on regular available bandwidth rates, not sporadic or burstable rates, with latency
7 suitable for real-time applications and services such as voice-over Internet protocol and video
8 conferencing, and with monthly usage capacity reasonably comparable to that of residential
9 terrestrial fixed broadband offerings in urban areas: *Provided*, That as the Federal
10 Communications Commission updates the downstream data rate and the upstream data rate the
11 council will publish the revised data rates in the State Register within sixty days of the federal
12 update.

13 (2) “Council” means the Broadband Enhancement Council.

14 (3) “Downstream data rate” means the transmission speed from the service provider
15 source to the end-user.

16 (4) “Internet protocol address” or “IP address” means a unique string of numbers
17 separated by periods that identifies each computer using the Internet Protocol to communicate
18 over a network.

19 (5) “Upstream data rate” means the transmission speed from the end-user to the service
20 provider source.

21 (6) "Unserved area" means a community that has no access to broadband service.

§31G-1-3. Broadband Enhancement Council; members of council; administrative support.

1 (a) The Broadband Enhancement Council is hereby established. The council is a
2 governmental instrumentality of the state. The exercise by the council of the powers conferred by
3 this article and the carrying out of its purpose and duties are considered and held to be, and are
4 hereby determined to be, essential governmental functions and for a public purpose. The council
5 is created under the Department of Commerce for administrative, personnel and technical support
6 services only.

7 (b) The council shall consist of thirteen voting members, designated as follows:

8 (1) The Secretary of Commerce or his or her designee;

9 (2) The Department of Administration Chief Technology Officer or his or her designee; and

10 (3) The Vice Chancellor for Administration of the Higher Education Policy Commission or
11 his or her designee;

12 (4) The State Superintendent of Schools or his or her designee; and

13 (5) Nine public members that serve at the will and pleasure of the Governor and are
14 appointed by the Governor with the advice and consent of the Senate, as follows:

15 (i) One member representing users of large amounts of broadband services in this state;

16 (ii) One member from each congressional district representing rural business users in this
17 state;

18 (iii) One member from each congressional district representing rural residential users in
19 this state;

20 (iv) One member representing urban business users in this state; and

21 (v) One member representing urban residential users in this state.

22 (6) In addition to the thirteen voting members of the council, the President of the Senate

23 shall name two senators from the West Virginia Senate, one from each party, and the Speaker of
24 the House shall name two delegates from the West Virginia House of Delegates, one from each
25 party, each to serve in the capacity of an ex officio, nonvoting advisory member of the council.

26 (c) The Secretary of Commerce shall chair the first meeting at which time a chair and vice
27 chair shall be elected from the members of the council. In the absence of the chair, the vice chair
28 shall serve as chair. The council shall appoint a secretary-treasurer who need not be a member
29 of the council and who, among other tasks or functions designated by the council, shall keep
30 records of its proceedings.

31 (d) The council may appoint committees or subcommittees to investigate and make
32 recommendations to the full council. Members of these committees or subcommittees need not
33 be members of the council.

34 (e) Seven voting members of the council constitute a quorum and the affirmative vote of
35 a simple majority of those members present is necessary for any action taken by vote of the
36 council.

37 (f) The gubernatorial appointed members shall be deemed part-time public officials, and
38 may pursue and engage in another business or occupation or gainful employment. Any person
39 employed by, owning an interest in or otherwise associated with a broadband deployment project,
40 project sponsor or project participant may serve as a council member and is not disqualified from
41 serving as a council member because of a conflict of interest prohibited under section five, article
42 two, chapter six-b of this code and is not subject to prosecution for violation of said section when
43 the violation is created solely as a result of his or her relationship with the broadband deployment
44 project, project sponsor or project participant so long as the member recuses himself or herself
45 from board participation regarding the conflicting issue in the manner set forth in section five,
46 article two, chapter six-b of this code and the legislative rules promulgated by the West Virginia

47 Ethics Commission.

48 (g) No member of the council who serves by virtue of his or her office receives any
49 compensation or reimbursement of expenses for serving as a member. The public members and
50 members of any committees or subcommittees are entitled to be reimbursed for actual and
51 necessary expenses incurred for each day or portion thereof engaged in the discharge of his or
52 her official duties in a manner consistent with the guidelines of the Travel Management Office of
53 the Department of Administration.

54 (h) No person is subject to antitrust or unfair competition liability based on membership or
55 participation in the council, which provides an essential governmental function and enjoys state
56 action immunity.

§31G-1-4. Powers and duties of the council generally.

1 (a) The council shall:

2 (1) Explore any and all ways to expand access to broadband services, including, but not
3 limited to, middle mile, last mile and wireless applications;

4 (2) Gather data regarding the various speeds provided to consumers in comparison to
5 what is advertised. The council may request the assistance of the Legislative Auditor in gathering
6 this data;

7 (3) Explore the potential for increased use of broadband service for the purposes of
8 education, career readiness, workforce preparation and alternative career training;

9 (4) Explore ways for encouraging state and municipal agencies to expand the
10 development and use of broadband services for the purpose of better serving the public, including
11 audio and video streaming, voice-over Internet protocol, teleconferencing and wireless
12 networking; and

13 (5) Cooperate and assist in the expansion of electronic instruction and distance education

14 services.

15 (b) In addition to the powers set forth elsewhere in this article, the council is hereby
16 granted, has and may exercise all powers necessary or appropriate to carry out and effectuate
17 the purpose and intent of this article. The council shall have the power and capacity to:

18 (1) Provide consultation services to project sponsors in connection with the planning,
19 acquisition, improvement, construction or development of any broadband deployment project;

20 (2) Promote awareness of public facilities that have community broadband access that
21 can be used for distance education and workforce development;

22 (3) Advise on deployment of e-government portals such that all public bodies and political
23 subdivisions have homepages, encourage one-stop government access and that all public entities
24 stream audio and video of all public meetings;

25 (4) Make and execute contracts, commitments and other agreements necessary or
26 convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to
27 assist in the mapping of the state and categorization of areas within the state;

28 (5) Acquire by gift or purchase, hold or dispose of real property and personal property in
29 the exercise of its powers and performance of its duties as set forth in this article;

30 (6) Receive and dispense funds appropriated for its use by the Legislature or other funding
31 sources or solicit, apply for and receive any funds, property or services from any person,
32 governmental agency or organization to carry out its statutory duties; and

33 (7) Perform any and all other activities in furtherance of its purpose.

34 (c) The council shall exercise its powers and authority to advise and make
35 recommendations to the Legislature on bringing broadband service to unserved and underserved
36 areas, as well as statutory changes that may enhance and expand broadband in the state.

37 (d) The council shall report to the Joint Committee on Government and Finance on or
38 before January 1 of each year. The report shall include the action that was taken by the council
39 during the previous year in carrying out the provisions of this article. The council shall also make

40 any other reports as may be required by the Legislature or the Governor.

§31G-1-5. Creation of the Broadband Enhancement Fund.

1 All moneys collected by the council, which may, in addition to appropriations, include gifts,
2 bequests or donations, shall be deposited in a special revenue account in the State Treasury
3 known as the Broadband Enhancement Fund. The fund shall be administered by and under the
4 control of the Secretary of the Department of Commerce. Expenditures from the fund shall be for
5 the purposes set forth in this article and are not authorized from collections but are to be made
6 only in accordance with appropriation by the Legislature and in accordance with the provisions of
7 article two, chapter eleven-b of this code.

§31G-1-6. Mapping of areas within state.

1 (a) Based on its analysis of data, broadband demand, and other relevant information, the
2 council shall establish a mapping of broadband services in the state. The council shall publish an
3 annual assessment and map of the status of broadband, including specifically designations of
4 unserved and underserved areas of the state.

5 (b) To the extent possible, and subject to limitations contained in subsection (e) of this
6 section, the council may additionally establish an interactive public map reflecting estimated
7 downstream data rate and upstream data rate in a particular region, area, community, street and
8 location. Any such mapping may only specify data rates at a particular street address or physical
9 location, and shall not make public the IP address or the name of the specific individual at such
10 location.

11 (c) The mapping provided for in this section may be based on information collected or
12 received by the council, including but not limited to, data collected from (1) state and federal
13 agencies or entities that collect data on broadband services; (2) industry provided information;
14 and (3) consumer data provided to the council pursuant to section nine of this article.

15 (d) The mapping and designations provided for under this section may be revised on a
16 continuing basis by the council as warranted by the data and information provided.

17 (e) In addition to the provisions of section thirteen of this article, the mapping of broadband
18 services may exclude from public accessibility and availability: (1) The location or identity of any
19 critical infrastructure used by public or private entities in furtherance of their internet services; (2)
20 personal name and personal IP addresses connected with particular data rates; and (3)
21 information designated as confidential for public security reasons by either state or federal
22 homeland security agencies: *Provided*, That it shall be duty of the public and private entities to
23 make the council aware of such confidential designation: *Provided, however*, That unless the
24 council determines good cause exists, the actual or estimated upstream and downstream data
25 rates of an area or region of the state shall not be excluded from public or private availability.

§31G-1-7. Retention of outside expert consultant.

1 (a) In order to assist the council with the highly technical task of categorizing the areas of
2 the state, the council may retain outside expert consultants to assist in the purposes of this article.
3 The experts may assist the Council to map the state on the basis of broadband availability, to
4 evaluate and categorize data, to assist in public outreach and education in order to stimulate
5 demand and to provide other support and assistance as necessary to accomplish the purposes
6 of this article.

7 (b) The retention and contracting of all expert consultants shall be transparent, including
8 specifically, making publicly available any contracts, retention agreements, payments and
9 invoicing for services.

§31G-1-8. Stimulation of demand through public outreach and education.

1 In order to implement and carry out the intent of this article, the council may take such
2 actions as it deems necessary or advisable in order to stimulate demand through public outreach
3 and education.

§31G-1-9. Collection of data.

1 (a) In order to ascertain, categorize, analyze, map, and update the status of broadband in
2 the state, as well as to enable the council to make informed policy and legislative
3 recommendations, the council may establish a voluntary data collection program. The program
4 may include voluntarily submitted data from internet service providers, including any home or
5 region data rate meters utilized by the provider. The program may also utilize and collect
6 voluntarily submitted data rate information submitted by any person reflecting the person's
7 personal data rate at a particular IP address. This personal data rate may be based upon a web-
8 based test or analysis program.

9 (b) Any and all data collected by the Council shall not be deemed public information and
10 is not subject to public release or availability pursuant to chapter twenty-nine-b of this code.

11 (c) Any data collection program established by the council shall:

12 (1) Make clear to those providers or persons submitting information that the data rate
13 speed may become public, including specific reference to the person's physical address;

14 (2) Make clear this is a voluntary data collection program and that submission of
15 information shall be deemed consent to use and make public such data rate information; and

16 (3) Not include any person's personal web history or search information, or otherwise
17 publicly identify the person's name in connection with an IP address or physical address.

18 (d) The council may establish guidelines and additional rules governing a data collection
19 program through the legislative rulemaking process, pursuant to the provisions of article three,
20 chapter twenty-nine-a of this code.

§31G-1-10. Pilot Project for cooperatives by political subdivisions.

1 (a) Notwithstanding any provision in the code to the contrary, the council may create
2 guidelines and recommend to the legislature a pilot project for no more than three municipalities
3 or counties, either individually or in conjunction with one another, to establish non-profit

4 cooperative associations to provide high-speed internet and broadband services.

5 (b) Nothing herein shall preclude or prohibit the establishment of a cooperative association
6 by non-political subdivisions outside the purview or authority of the council. It is not a requirement
7 that a cooperative association established under article two of this chapter seek approval or
8 guidance from the council, and such cooperative associations established under article two of this
9 chapter shall not be under the authority of, nor subject to, the council.

§31G-1-11. Voluntary pipeline donation and easement programs.

1 (a) The council may create guidelines and recommend to the Legislature a voluntary
2 pipeline donation program to allow for abandoned pipeline in the state to be donated to state for
3 use by public or private entities to facilitate broadband service and availability through placement
4 of fiber.

5 (b) The council may create guidelines and recommend to the Legislature a program to
6 allow for an easement program to be established to allow public or private entities to facilitate
7 broadband service and availability through placement of fiber.

§31G-1-12. Grants.

1 In furtherance of the purposes of this article, the council is permitted to seek non-state
2 funding and grants. The council may utilize funding and grants to support the responsibilities,
3 initiatives and projects set forth this article. The council may additionally disperse such monies to
4 fund projects and initiatives in furtherance of the enhancement and expansion of broadband
5 services in this state, and the other purposes of this article.

§31G-1-13. Protection of proprietary business information.

1 (a) Broadband deployment information provided to the council or its consultants and other
2 agents, including, but not limited to, physical plant locations, subscriber levels, and market
3 penetration data, constitutes proprietary business information and, along with any other

4 information that constitutes trade secrets, shall be exempt from disclosure under the provisions
5 of chapter twenty-nine-b of this code: *Provided*, That the information is identified as confidential
6 information when submitted to the council.

7 (b) Trade secrets or proprietary business information obtained by the council from
8 broadband providers and other persons or entities shall be secured and safeguarded by the state.
9 Such information or data shall not be disclosed to the public or to any firm, individual or agency
10 other than officials or authorized employees of the state. Any person who makes any unauthorized
11 disclosure of such confidential information or data is guilty of a misdemeanor and, upon conviction
12 thereof, may be fined not more than \$5,000 or confined in a correctional facility for not more than
13 one year, or both.

14 (c) The official charged with securing and safeguarding trade secrets and proprietary data
15 for the council is the Secretary of Administration, who is authorized to establish and administer
16 appropriate security measures. The council chair shall designate two additional persons to share
17 the responsibility of securing trade secrets or proprietary information. No person will be allowed
18 access to trade secrets or proprietary information without written approval of a minimum of two of
19 the three authorized persons specified above.

§31G-1-14. Legislative rule-making authority.

1 In order to implement and carry out the intent of this article, the Secretary of the
2 Department of Commerce, at the direction and recommendation of the council, may propose rules
3 for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this
4 code.

ARTICLE 2. COOPERATIVE ASSOCIATIONS.

§31G-2-1. Definitions.

1 As used in this article:

2 (1) “Cooperative association” or “association” means any corporation organized under this
3 article. Each association shall also comply with the requisite business corporation provisions of
4 chapter thirty-one-d or thirty-one-f of this code, or the nonprofit corporation provisions of chapter
5 thirty-one-e of this code.

6 (2) “Internet services” means providing access to, and presence on, the internet and other
7 services. Data may be transmitted using several technologies, including dial-up, DSL, cable
8 modem, wireless, or dedicated high-speed interconnects.

9 (3) “Member” means a member of an association without capital stock and a holder of
10 common stock in an association organized with capital stock.

11 (4) “Qualified person” means a person who is engaged in the use of internet services,
12 either in an individual capacity or as a business.

13 (5) “Qualified activity” means using internet services.

§31G-2-2. Who may organize.

1 Notwithstanding any provision of this code to the contrary, fifty or more qualified persons
2 engaged in the use of internet services may form a cooperative association, with or without capital
3 stock, under this article.

§31G-2-3. Legislative findings and purposes.

1 (a) It is the finding of the Legislature that:

2 (1) Although market-driven deployment has extended broadband access to West
3 Virginia's cities, towns, and other concentrated population areas, areas of the state, mostly rural,
4 remain unserved or underserved.

5 (2) That the unique topography and demography of this state hinders broadband access
6 across the state.

7 (4) The lack of affordable, accessible broadband service in the underserved and unserved
8 areas in this state necessitates consideration of alternative means and methods of providing
9 internet services.

10 (b) It is the purpose of this article that individuals and businesses be able to form
11 cooperative associations for the purpose of obtaining internet services within their respective
12 regions and communities.

§31G-2-4. Powers.

13 A cooperative association shall have the following powers:

14 (1) To engage in any qualified activity in connection with any internet service; or any
15 activity in connection with the purchase, providing or use by its members of internet services; or
16 in the financing, directly, through the association of any qualified activities. All transactions with
17 nonmembers shall be on terms fixed by the association and nonmembers shall not otherwise
18 participate in any benefits derived from such transactions;

19 (2) To borrow money without limitation as to amount of corporate indebtedness or liability,
20 and to make advance payments and advances to members; to execute, issue, draw, make,
21 accept, endorse and guarantee, without limitation, promissory notes, bills of exchange, drafts,
22 warrants, certificates, mortgages, and any other form of obligation or negotiable or transferable
23 bills of any kind; to become the surety, guarantor, maker, and/or endorser for accommodation or
24 otherwise of bills, notes, securities and other evidences of debt of any association or person,
25 anything in any other statutes or law of this state to the contrary notwithstanding;

26 (3) To act as the agent or representative of any member or members in any of the above-
27 mentioned activities;

28 (4) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership
29 in, and to sell, transfer or pledge, or guarantee the payment of dividends or interest on, or the
30 retirement or redemption of, shares of the capital stock or bonds of any corporation or association
31 engaged in any related activity or in the providing and marketing of any of the products handled
32 by the association;

33 (5) To establish reserves and to invest the funds thereof in bonds or in such other property
34 as may be provided in the bylaws;

35 (6) To buy, hold and exercise all privileges of ownership over real or personal property as
36 may be necessary or convenient for the conduct and operation of any of the business of the
37 association, or incidental thereto;

38 (7) To establish, secure, own and develop patents, trademarks and copyrights;

39 (8) To do each and every thing necessary, suitable or proper for the accomplishment of
40 any one of the purposes or the attainment of any one or more of the subjects herein enumerated,
41 or conducive to or not contrary to the interest or benefit of the association; and to contract
42 accordingly; and, in addition, to exercise and possess all powers, rights and privileges necessary
43 or incidental to the purposes for which the association is organized or to the activities in which it
44 is engaged, and any other rights, powers, and privileges granted by the laws of this state to
45 ordinary corporations, except such as are inconsistent with the purposes of this article.

§31G-2-5. Members.

1 (a) Under the terms and conditions prescribed in the bylaws adopted by it, a cooperative
2 association may admit as members, or issue common stock to, only qualified persons.

3 (b) If a member of a nonstock association be other than a natural person, the member
4 may be represented by an individual, associate, officer or manager or member thereof, duly
5 authorized in writing.

6 (c) One association organized hereunder may become a member or stockholder of any
7 other association or associations organized under this article or similar laws of any state.

§31G-2-6. Articles of incorporation.

1 Each association formed under this article shall prepare and file articles of incorporation,
2 setting forth:

3 (1) The name of the association, which includes the words "cooperative," "co-operative,"
4 or "co-op," and words or abbreviations designating a corporation;

5 (2) The purposes for which it is formed;

6 (3) The place where its principal business will be transacted;

- 7 (4) The period, if any prescribed, for the duration of the corporation;
- 8 (5) The number of incorporators which is not less than fifty, the number of directors which
9 is not less than fifty and any number in excess of those minimums, or it may be set forth that the
10 number of directors will be fixed by the bylaws;
- 11 (6) If organized without capital stock, whether the property rights and interest of each
12 member are equal or unequal; and if unequal, the general rules applicable to the classes of
13 members whose property rights and interest are determined and fixed; and provision for the
14 admission of new members who may be entitled to share in the property of the association with
15 the old members, in accordance with the general rules. This provision of the articles of
16 incorporation may not be altered, amended or repealed except by the written consent or vote of
17 three fourths of the members;
- 18 (7) If organized with capital stock and authorized to issue only one class of stock, the total
19 number of shares of stock which the association has authority to issue, including: (A) The par
20 value of each of the shares; or (B) a statement that all the shares are to be without par value;
- 21 (8) If the association is authorized to issue more than one class of stock, the total number
22 of shares of all classes of stock which the association may issue, including: (A) The number of
23 shares of each class that have a par value and the par value of each share by class; (B) the
24 number of shares that are to be without par value; and (C) a statement of the powers, preferences,
25 rights, qualifications, limitations or restrictions that are permitted by section thirteen of this article
26 in respect to a class of stock fixed by the articles of incorporation or by resolution of the board of
27 directors;
- 28 (9) The articles shall be signed and filed in accordance with the provisions of the business
29 or nonprofit corporation laws of this state;
- 30 (10) The articles may also contain any provisions managing, defining, limiting or regulating
31 the powers and affairs of the association, the directors, the stockholders or members of the
32 association.

§31G-2-7. Amendments to articles of incorporation.

1 The articles of incorporation may be altered or amended at any regular meeting or any
2 special meeting called for that purpose. An amendment must first be approved by two thirds of
3 the directors and then adopted by a vote representing a majority of all the members of the
4 association. Amendments to the articles of incorporation, when so adopted, shall be filed in
5 accordance with the provisions of the general corporation laws of this state.

§31G-2-8. Bylaws.

1 Each association incorporated under this article, must, within thirty days after its
2 incorporation, adopt for its government and management a code of bylaws, not inconsistent with
3 the powers granted by this article. A majority vote of the members or stockholders, or their written
4 assent, is necessary to adopt such bylaws. Each association, under its bylaws, may provide for
5 any or all of the following matters:

6 (1) The time, place and manner of calling and conducting its meetings;

7 (2) The number of stockholders or members constituting a quorum;

8 (3) The right of members or stockholders to vote by proxy or by mail or both; and the
9 conditions, manner, form, and effect of such votes;

10 (4) The number of directors constituting a quorum; and, if authority therefor is given in the
11 articles of incorporation, the total number of directors;

12 (5) The qualifications, compensation, duties and term of office of directors and officers;
13 time of their election and the mode and manner of giving notice thereof;

14 (6) Penalties for violation of the bylaws;

15 (7) The amount of entrance, organization and membership fees, if any; the manner and
16 method of collecting the same; and the purposes for which they may be used;

17 (8) The amount which each member or stockholder shall be required to pay annually or
18 from time to time, if at all, to carry on the business of the association; the charge, if any, to be
19 paid by each member or stockholder for services rendered by the association to him or her and

20 the time of payment and the manner of collection; and the marketing contract between the
21 association and its members or stockholders which every member or stockholder may be required
22 to sign;

23 (9) The number and qualifications of members or stockholders of the association and the
24 conditions precedent to membership or ownership of common stock; the method, time and
25 manner of permitting members to withdraw or the holders of common stock to transfer their stock;
26 the manner of assignment and transfer of the interest of members and of the shares of common
27 stock; the conditions upon which and time when membership of any member shall cease; the
28 automatic suspension of the rights of a member when he or she ceases to be eligible to
29 membership in the association; the mode, manner and effect of the expulsion of a member; the
30 manner of determining the value of a member's interest, and provision for its purchase by the
31 association, at its option, upon the death or withdrawal of a member or stockholder, or upon the
32 expulsion of a member or forfeiture of his or her membership, or, at the option of the association,
33 the purchase at a price fixed by conclusive appraisal by the board of directors, or at the election
34 of the board, such property interests may be sold at public auction to the association itself, or to
35 any person eligible to membership in such association and the proceeds of such sale paid over
36 to the personal representative of such deceased member, or to the member withdrawing or
37 expelled, as the case may be.

§31G-2-9. General and special meetings.

1 In its bylaws, each association shall provide for one or more regular meetings annually.
2 The board of directors shall have the right to call a special meeting at any time; and ten percent
3 of the members or stockholders may file a petition stating the specific business to be brought
4 before the association and demand a special meeting at any time. Such meeting must thereupon
5 be called by the directors. Notice of all meetings, together with a statement of the purposes
6 thereof, shall be mailed to each member at least ten days prior to the meeting: *Provided*, That the
7 bylaws may require instead that such notice may be given as provided by this section, namely,

8 as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-
9 nine of this code, and the publication area for such publication shall be the county in which the
10 principal place of business of the association is located.

§31G-2-10. Directors.

1 (a) The affairs of the association shall be managed by a board of not less than three
2 directors, elected by the members or stockholders.

3 (b) The bylaws may provide that the territory in which the association has members shall
4 be divided into districts and that the directors be elected either directly or by district delegates
5 elected by the members in that district. The bylaws shall specify the number of directors to be
6 elected by each district, the manner of reapportioning the directors and the method of redistricting
7 the territory covered by the association. The bylaws may provide that primary elections shall be
8 held in each district to elect the directors apportioned to the districts and that the results of all the
9 primary elections may be ratified during the next regular meeting of the association or may be
10 considered final.

11 (c) The bylaws may provide that one or more directors may be appointed by a public
12 official, commission or by the other directors. These public directors shall represent the interest
13 of the general public in the associations. The public directors need not be members or
14 stockholders of the association, but shall have the same powers and rights as other directors.
15 The directors shall not number more than one fifth of the entire number of directors.

16 (d) An association may provide a fair remuneration for the time actually spent by its officers
17 and directors in its service and for the service of the members of its executive committee. No
18 director, during the term of his or her office, shall be a party to a contract for profit with the
19 association differing from the contractual terms accorded regular members or holders of common
20 stock of the association.

21 (e) The bylaws may provide that no director, except the president and secretary, shall
22 occupy a position in the association on regular salary or substantially full-time pay.

23 (f) The bylaws may provide for an executive committee and may allot to the committee all
24 the functions and powers of the board of directors, subject to the general direction and control of
25 the board.

26 (g) When a vacancy on the board of directors occurs other than by expiration of term, the
27 remaining members of the board, by a majority vote, shall fill the vacancy, unless the bylaws
28 provide for an election of directors by district. In that case the board of directors shall immediately
29 call a special meeting of the members or stockholders in that district to fill the vacancy.

§31G-2-11. Officers.

1 The directors shall elect from their number a president and one or more vice presidents.
2 They shall also elect a secretary and a treasurer, who need not be directors or members of the
3 association; and they may combine the two latter offices and designate the combined office as
4 secretary-treasurer; or unite both functions and titles in one person. The treasurer may be a bank
5 or any depository, and, as such, shall not be considered an officer, but as a function of the board
6 of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer,
7 except that the funds shall be deposited only as and where authorized by the board of directors.

§31G-2-12. Officers, employees and agents to be bonded.

1 Every officer, employee and agent handling funds or negotiable instruments or property
2 of or for any association created hereunder shall be required to execute and deliver adequate
3 bonds for the faithful performance of his or her duties and obligations.

§31G-2-13. Stock; membership certificate; voting; liability; limitations on transfer and
ownership.

1 (a) When a member of an association established without capital stock has paid his or her
2 membership fee in full, he or she shall receive a certificate of membership. An association shall
3 have power to issue one or more classes of stock, or one or more series of stock within any class
4 thereof, any or all of which classes may be of stock with par value or stock without par value, with
5 such voting powers, full or limited, or without voting powers and in such series, and with such

6 designations, preferences and relative, participating, optional or other special rights, and
7 qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of
8 incorporation, or in any amendment thereto, or in the resolution or resolutions providing for the
9 issue of such stock adopted by the board of directors pursuant to authority expressly vested in it
10 by the provisions of the articles of incorporation or of any amendment thereto.

11 (b) No association shall issue stock to a member until it has been fully paid for. The
12 promissory notes of the members may be accepted by the association as full or partial payment.
13 The association shall hold the stock as security for the payment of the note; but such retention as
14 security shall not affect the member's right to vote.

15 (c) No member shall be liable for the debts of the association to an amount exceeding the
16 sum remaining unpaid on his or her membership fee or his or her subscription to the capital stock,
17 including any unpaid balance on any promissory notes given in payment thereof.

18 (d) An association in its bylaws may limit the amount of common stock which one member
19 may own. No member or stockholder shall be entitled to more than one vote, regardless of the
20 number of shares of common stock owned by him or her.

21 (e) Any association organized with stock under this article may issue preferred stock, with
22 or without the right to vote. Such stock may be sold to any person, member or nonmember, and
23 may be redeemable or retireable by the association on such terms and conditions as may be
24 provided for by the articles of incorporation and printed on the face of the certificate. The bylaws
25 shall prohibit the transfer of the common stock of the association to persons who are not qualified
26 persons, or organizations that are not engaged in qualified activities handled by the association,
27 or to persons or organizations that are not members of credit associations financing such
28 products; and such restrictions shall be printed upon every certificate of stock subject thereto.

29 (f) Other kinds and classes of stock may be issued in compliance with the provisions of
30 the articles of incorporation, the terms of the bylaws, or special resolutions of the board of
31 directors.

32 (g) The association may, at any time, as specified in the bylaws, except when the debts
33 of the association exceed fifty percent of the assets thereof, buy in or purchase its common stock
34 at the book value thereof, as conclusively determined by the board of directors, and pay for it in
35 cash within one year thereafter.

§31G-2-14. Removal of officer or director.

1 Any member may bring charges against an officer or director by filing them in writing with
2 the secretary of the association, together with a petition signed by five percent of the members,
3 requesting the removal of the officer or director in question. The removal shall be voted upon at
4 the next regular or special meeting of the association and, by a vote of a majority of the members,
5 the association may remove the officer or director and fill the vacancy. The director or officer
6 against whom such charges have been brought shall be informed in writing of the charges
7 previous to the meeting and shall have an opportunity at the meeting to be heard in person or by
8 counsel and to present witnesses; and the person or persons bringing the charges against him or
9 her shall have the same opportunity.

10 In case the bylaws provide for election of directors by districts with primary elections in
11 each district, then the petition for removal of a director must be signed by twenty percent of the
12 members residing in the district from which he or she was elected. The board of directors must
13 call a special meeting of the members residing in that district to consider the removal of the
14 director; and by a vote of the majority of the members of that district the director in question shall
15 be removed from office.

§31G-2-15. Referendum.

1 Upon demand of one third of the entire board of directors, made immediately and so
2 recorded, at the same meeting at which the original motion was passed, any matter of policy that
3 has been approved or passed by the board must be referred to the entire membership or the
4 stockholders for decision at the next special or regular meeting; and a special meeting may be
5 called for the purpose.

§31G-2-16. Marketing contract.

1 The association and its members may take and execute marketing contracts, requiring the
2 members, for any period of time not over five years, to use, receive or provide all or any specified
3 part of an internet service exclusively to or through the association, or any facilities to be created
4 by the association. If they contract a sale to the association, it shall be conclusively held that title
5 to the products, goods and services passes absolutely and unreservedly, except for recorded
6 liens, to the association upon delivery, or at any other specified time if expressly and definitely
7 agreed in such contract. The contract may provide, among other things, that the association may
8 sell or resell the products, goods and services delivered by its members, with or without taking
9 title thereto, and pay over to its members the resale price, after deducting all necessary selling,
10 overhead and other costs and expenses, including interest or dividends on stock, not exceeding
11 eight percent per annum, and reserves for retiring the stock, if any; and any other proper reserves;
12 or any other deductions.

§31G-2-17. Remedies for breach of contract.

1 The bylaws or the marketing contract may fix, as liquidated damages, specific sums to be
2 paid by the member or stockholder to the association upon the breach by him or her of any
3 provision of the marketing contract regarding the sale or delivery or withholding of internet
4 services, and may further provide that the member will pay all costs, premiums for bonds,
5 expenses and fees, in case the association shall prevail in any action brought by it upon the
6 contract; and any such provisions shall be valid and enforceable in the courts of this state; and
7 such clauses providing for liquidated damages shall be enforceable as such and shall not be
8 regarded as penalties.

9 In the event of any such breach or threatened breach of such marketing contract by a
10 member, the association shall be entitled to an injunction to prevent the further breach of the
11 contract and to a decree of specific performance thereof. Pending the adjudication of such an
12 action and upon filing a verified complaint showing the breach or threatened breach, and upon

13 filing a sufficient bond, the association may be entitled to a temporary restraining order and
14 preliminary injunction against the member.

15 In any action upon such marketing agreement, it shall be presumed as between the parties
16 that the landowner, landlord or lessor claiming therein so to be is able to control the delivery of
17 internet services produced on his or her land by tenants or others, whose tenancy or possession
18 or work on such land or the terms of whose tenancy or possession or labor thereon were created
19 or changed after execution by the landowner, landlord or lessor of such marketing agreement;
20 and in such actions the foregoing remedies for nondelivery or breach shall lie and be enforceable
21 against such landowner, landlord or lessor.

§31G-2-18. Purchasing property of other associations, persons, firms or corporations.

1 Whenever an association, organized under this article with preferred capital stock, shall
2 purchase the stock of any property, or any interest in any property, or any person, firm or
3 corporation or association, it may discharge the obligations so incurred, wholly or in part, by
4 exchanging for the acquired interest shares of its preferred capital stock to an amount which at
5 par value would equal the fair market value of the stock or interest so purchased, as determined
6 by the board of directors. In that case the transfer to the association of the stock or interest
7 purchased shall be equivalent to payment in cash for the shares of stock issued.

§31G-2-19. Annual reports.

1 Each association formed under this article shall prepare an annual report on forms
2 provided by and filed with the Secretary of State pursuant to the requirements of section two-a,
3 article one, chapter fifty-nine of this code.

§31G-2-20. Conflicting laws not to apply; exemptions.

1 Any provisions of law which are in conflict with this article shall be construed as not
2 applying to the association herein provided for.

3 Any exemptions whatsoever under any and all existing laws applying to agricultural
4 products in the possession or under the control of the individual producer shall apply similarly and

5 completely to such products delivered by its former members, in the possession or under the
6 control of the association.

§31G-2-21. Use of term "cooperative."

1 A cooperative association formed pursuant to this article shall include the words
2 "cooperative", "co-operative" or "co-op" in the name, and the words or abbreviations designating
3 a corporation.

§31G-2-22. Interest in other corporations or associations.

1 An association may organize, form, operate, own, control, have an interest in, own stock
2 of, or be a member of any other corporation or corporations, with or without capital stock, and
3 engaged in qualified activities regarding internet services.

§31G-2-23. Contracts and agreements with other associations.

1 Any association may, upon resolution adopted by its board of directors, enter into all
2 necessary and proper contracts and agreements and make all necessary and proper stipulations,
3 agreements and contracts and arrangements with any other cooperative corporation, association
4 or associations, formed in this or in any other state, for the cooperative and more economical
5 carrying on of its business or any part or parts thereof. Any two or more associations may, by
6 agreement between them, unite in employing and using, or may separately employ and use, the
7 same personnel, methods, means and agencies for carrying on and conducting their respective
8 business.

§31G-2-24. Rights and remedies apply to similar associations of other states.

1 Any corporation or association heretofore or hereafter organized under generally similar
2 laws of another state shall be allowed to carry on any proper activities, operations and functions
3 in this state upon compliance with the general regulations applicable to foreign corporations
4 desiring to do business in this state, and all contracts made by or with such associations, which
5 could be made by any association incorporated hereunder, shall be legal and valid and
6 enforceable in this state with all of the remedies set forth in this article.

§31G-2-25. Associations heretofore organized may adopt provisions of article.

1 Any corporation or association organized in this state under previously existing statutes
2 may, by a majority vote of its stockholders or members, be brought under the provisions of this
3 article by limiting its membership and adopting the other restrictions as provided herein. It shall
4 make out in duplicate a statement signed and sworn to by its directors to the effect that the
5 corporation or association has, by a majority vote of the stockholders or members, decided to
6 accept the benefits and be bound by the provisions of this article and has authorized all changes
7 accordingly. Articles of incorporation shall be filed as required in section six, except that they shall
8 be signed by the members of the then board of directors. The filing fee shall be the same as for
9 filing an amendment to articles of incorporation.

10 Where any association may be incorporated under this article, all contracts made prior to
11 April 18, 1923, by or on behalf of such association by the promoters thereof in anticipation of its
12 becoming incorporated under the laws of this state, whether or not such contracts be made by or
13 in the name of some corporation organized elsewhere, and when they would have been valid if
14 entered into subsequent to such date, shall be held valid as if made after such date.

§31G-2-26. Liability as to delivery of products in violation of marketing agreements.

1 Any person who solicits, persuades or permits any member of any association organized
2 hereunder to breach his or her marketing contract with the association or one association with
3 another, by accepting or receiving such member's products for sale or for auction or for display
4 for sale, contrary to the terms of any marketing agreement of which such person has knowledge
5 or notice, shall be liable to the association aggrieved in a civil suit for damages therefor. Courts
6 of equity shall have jurisdiction to enjoin further breaches of such contract.

§31G-2-27. Associations to be deemed not in restraint of trade.

1 No association organized under this article and complying with the terms thereof shall be
2 deemed to be a conspiracy or a combination in restraint of trade or an illegal monopoly or an
3 attempt to lessen competition or to fix prices arbitrarily; nor shall the marketing contract and

4 agreements between the association and its members or any agreements authorized in this article
5 be considered illegal as such or in unlawful restraint of trade or as part of a conspiracy or
6 combination to accomplish an improper or illegal purpose.

§31G-2-28. Application of business corporation laws; nonprofit corporation laws.

1 The provisions of the business corporation laws in chapter thirty-one-d or the nonprofit
2 corporation laws in chapter thirty-one-e of this code and all powers and rights thereunder shall
3 apply to the associations organized under this article and may be used by them, except when the
4 provisions are in conflict with or inconsistent with the express provisions of this article.

ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.

§31G-3-1. Definitions.

1 “Microtrenching” means a technique of deploying cables, including specifically for
2 broadband networks, using a cutting wheel to cut a trench with smaller dimensions than can be
3 achieved with conventional trench digging equipment; with the trench dimensions being no
4 greater than six inches in width, and a maximum depth of one foot.

§31G-3-2. Microtrenching permitted; notification.

1 (a) An entity may perform microtrenching to the extent allowed by a permit issued by the
2 appropriate municipality, county or state agency.

3 (b) An entity must install conduit in a way that will readily permit another owner to add
4 length to the microtrenching by connecting its own conduit to the first owner’s conduit. Where an
5 owner connects its own conduit to another owner’s previously installed conduit, the owner must
6 install conduit that has the same number of pathways or pipes as the previous owner’s conduit.

7 (c) An entity must install a vacant conduit of the same size as its own conduit when
8 performing microtrenching operations. Other entities desiring use of conduit in the same area may
9 make use of this vacant conduit upon application.

10 (d) When applying for a permit an entity must notify the appropriate agency of the intended
11 dates of the start and completion of microtrenching construction. Notification must be made on a

12 form and in a format prescribed by the agency. The entity shall submit the following documents
13 to the agency:

14 (1) Proof of insurance; and

15 (2) An indemnification agreement prepared by the agency

16 (e) Promptly after completion of microtrenching construction, but no longer than forty
17 calendar days after issuance of the permit for microtrenching, the entity must file a document with
18 the appropriate agency containing the following information:

19 (1) An “as-built” drawing of the conduit installed. The “as-built” drawing will be treated as
20 proprietary and confidential, to the extent permitted by law.

21 (2) A map showing the street location of the conduit including the side of the street the
22 conduit is on, the beginning and ending points of the conduit, the number of ducts in the conduit,
23 and the number of ducts of excess capacity in the conduit. The map must accurately reflect the
24 addresses of buildings that are passed by the conduit.

ARTICLE 4. MAKE-READY POLE ACCESS

§31G-4-1. Definitions.

1 As used in this article, the following terms are defined as follows:

2 (1) “Attacher” means any person, corporation, or other entity or their agents or contractors
3 seeking to permanently or temporarily fasten or affix any type of equipment, antenna, line or
4 facility of any kind to a utility pole in the right of way or its adjacent ground space.

5 (2) “Attachment Application” means the application made by an Attacher to a Pole Owner
6 for attachment of equipment, antenna, line or facility of any kind to a utility pole.

7 (3) “Make Ready Costs” means the costs incurred by an Attacher associated with the
8 transfer of the facilities, antenna, lines or equipment of a Pre-Existing Third Party User,
9 undertaken by an Attacher to enable attachment to the utility pole or similar structure. Make-
10 Ready Costs that are to be paid by an Attacher include, without limitation, all costs and expenses
11 to relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be

12 necessary to accommodate an Attacher's attachment.

13 (4) "Pole Owner" means a person, corporation or entity having ownership of a pole or
14 similar structure in the right of way to which utilities, including without limitation, electric and
15 communications facilities, are located or may be located whether such ownership is in fee simple
16 or by franchise.

17 (5) "Pre-Existing Third Party User" means the owner of any currently operating facilities,
18 antenna, lines or equipment on a pole or its adjacent ground space in the right of way.

§31G-4-2. Attachment to third party facilities.

1 (a) Upon approval of an Attachment Application, an Attacher may relocate or alter the
2 attachments or facilities of any Pre-Existing Third Party User as may be necessary to
3 accommodate an Attacher's attachment using Pole Owner approved contractors; provided,
4 however, that an Attacher will not effectuate a relocation or alteration of a Pre-Existing Third Party
5 User's facilities that causes or would reasonably be expected to cause a customer outage without
6 first providing thirty days prior written notice to the Pre-Existing Third Party User.

7 (b) In the event the Pre-Existing Third Party Users of such other facilities fail to transfer or
8 rearrange their facilities within thirty days from receipt of notice of relocation or alteration of a Pre-
9 Existing Third Party User's facilities that causes or would reasonably be expected to cause a
10 customer outage, an Attacher may undertake such work.

11 (c) Within thirty (30) days of the completion of any relocation or alteration, an Attacher
12 shall send notice of the move and as-built reports to the Pre-Existing Third Party User and the
13 owner(s) of all poles or other structures on which such relocations or alterations were made. The
14 as-built reports shall include a unique field label identifier, and an address or coordinates.

15 (d) Upon receipt of the as-built reports, the Pre-Existing Third Party User and pole or
16 structure owner(s) may conduct an inspection within fourteen days at an Attacher's expense. An
17 Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing
18 Third Party User and pole or structure owner(s) for the inspection. If any such relocation or

19 alteration results in the facilities of the Pre-Existing Third Party User on the pole or other structure
20 failing to conform with the applicable safety Pole Owner's standards, the Pre-Existing Third Party
21 User shall, within seven days of the inspection, notify an Attacher of such failure to conform.

22 (e) In a notice, the Pre-Existing Third Party User will elect to either:

23 (1) Perform the correction itself and bill the Attacher for the actual, reasonable and
24 documented costs of the correction, or

25 (2) Instruct the Attacher to correct such conditions at Attacher's expense. Any post-
26 inspection corrections performed by the Attacher must be completed within thirty days of such
27 notification.

28 (f) As a condition of exercising the ability to relocate, rearrange, or alter a Pre-Existing
29 Third Party User's facilities pursuant to this section, an Attacher shall indemnify, defend and hold
30 harmless the owner or owners of all poles or other structures on which such relocation,
31 rearrangement or alteration takes place, the affiliates of such owner or owners, and the officers,
32 directors and employees of such owner or owners and their affiliates (each an "Indemnitee") from
33 and against all third party damage, loss, claim, demand, suit, liability, penalty or forfeiture of every
34 kind and nature, including, but not limited to, costs and expenses of defending against the same,
35 payment of any settlement or judgment therefor and reasonable attorney's fees, that are actually
36 and reasonably incurred by an Indemnitee, by reason of any claim by an affected Pre-Existing
37 Third Party User or any person or entity claiming through such Pre-Existing Third Party User
38 arising from such relocation, rearrangement or alteration.

§31G-4-3. Exceptions.

1 (a) Notwithstanding any provision of this code to the contrary, the provisions of this article
2 shall not apply to:

3 (1) Facilities located above the "Communication Worker Safety Zone" as such term is
4 defined in the National Electrical Safety Code; or

5 (2) Any electric supply facilities wherever located.

6 (b) This article does not authorize any activity requiring an electric supply outage.

ARTICLE 5. ADVERTISEMENT AND CONTRACTING FOR INTERNET DATA SPEEDS.

§31G-5-1. Definitions.

1 As used in this article, the following terms are defined as follows:

2 (1) "Advertise" means the publication, dissemination or circulation of any matter, oral or
3 written, including labeling, which tends to induce, directly or indirectly, any person to enter into
4 any obligation, sign any contract or acquire any title or interest in any goods or services.

5 (2) "Contract term" means a provision, element or term that is part of an agreement
6 between a person and an internet service provider for a service or product.

7 (3) "Downstream data rate" means the transmission speed from the service provider
8 source to the end-user.

9 (4) "Internet Service Provider" means a person or entity engaged in the business of
10 providing computer communications through, or access to, the internet.

11 (5) "Person" means a natural person or a legal entity, including, without limitation, an
12 individual, partnership, limited liability company, association, trust or corporation.

13 (6) "Upstream data rate" means the transmission speed from the end-user to the service
14 provider source.

§31G-5-2. Prohibited conduct.

1 (a) It shall be unlawful for any internet service provider to advertise, or to include as a
2 contract term, the downstream data rate or upstream data rate service solely in terms of the
3 maximum anticipated data rate or as an "up to" speed. When an internet service provider desires
4 to advertise, or include as a contract term, the data rate for a particular service, the advertisement
5 or contract term shall specify the minimum data rate to be provided as part of the service.

6 (b) A violation of subsection (a) of this section shall be deemed an unfair or deceptive act

- 7 or practice, as defined in subsection (7), section one hundred two, article six, chapter forty-six-a
- 8 of this code, and may be enforced or remedied in accordance with chapter forty-six-a.

NOTE: The purpose of this bill is to establish Broadband Enhancement and Expansion Policies. The bill moves the existing Broadband Enhancement Council into a new chapter, and sets forth additional duties and responsibilities for the council. The bill additionally authorizes the establishment of cooperative associations for the purpose of obtaining internet services. It also establishes new policies and protocols for microtrenching and make-ready pole access. Finally, it makes it an unfair and deceptive practice for an internet service provider to advertise or contract for “up to” speeds.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.