

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4001

BY DELEGATES LINVILLE, PACK, HOLSTEIN, TONEY,

MALLOW, HAMRICK, BARNHART, WORRELL, KIMBLE,

ROWAN, AND NESTOR

[Passed March 12, 2022; in effect ninety days from passage.]

1 AN ACT to amend and reenact §31G-1A-7 of the Code of the West Virginia, 1931, as amended;
2 to amend said code by adding thereto a new section, designated §31G-1A-8; to amend
3 said code by adding thereto a new section, designated §31G-3-5; to amend said code by
4 adding thereto a new section, designated §31G-4-2a; to amend said code by adding
5 thereto a new article, designated §31G-7-1, §31G-7-2, §31G-7-3, §31G-7-4 and §31G-7-
6 5; and to amend said code by adding thereto a new article, designated §31G-8-1, §31G-
7 8-2 §31G-8-3 and §31G-8-4, all relating to certain provisions relating to broadband; adding
8 certain provisions to the administration of the Broadband Development Fund, including
9 regulating the disposal of grant funded assets; relating to creating the Broadband Carrier
10 Neutral and Open Access Infrastructure Development Fund; providing for the
11 administration of the fund, sources of funding for the fund, and the purposes for
12 expenditures from the fund; authorizing expenditures from the fund from collections and
13 pursuant to legislative appropriations; providing that a broadband project or extension
14 shall be a carrier neutral and open access project if it is funded by 100 percent of public
15 money; creating a process for the mapping of disturbances in rights of way; creating utility
16 pole rights of way and easement mapping initiative; creating existing customer protections
17 for the Office of the Attorney General in coordination with the Office of Broadband and
18 Department of Economic Development; establishing fees; providing for competitive
19 access infrastructure; providing for credits; defining modems and other connection
20 devices; defining competitive access infrastructure; defining eligible telecommunications
21 carriers; defining the status of such; and providing for penalties where misrepresentation
22 of eligible telecommunications carrier status occurs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. OFFICE OF BROADBAND.

§31G-1A-7. Broadband Development Fund.

1 (a) The Broadband Development Fund is hereby created in the State Treasury. The fund
2 shall be administered by the Secretary of the Department of Economic Development and shall
3 consist of all moneys made available for the purposes of this article from any source, including,
4 but not limited to, all gifts, grants, bequests or transfers from any source, any moneys that may
5 be appropriated to the fund by the Legislature, and all interest or other return earned from
6 investment of the fund. Expenditures from the fund shall be for the purposes set forth in subsection
7 (b) of this section and are not authorized from collections but are to be made only in accordance
8 with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of
9 this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code:
10 *Provided*, That for the fiscal year ending June 30, 2022, expenditures are authorized from
11 collections rather than pursuant to an explicit appropriation by the Legislature. Any balance,
12 including accrued interest and other returns, remaining in the fund at the end of each fiscal year
13 shall not revert to the General Revenue Fund but shall remain in the fund and be expended as
14 provided by this section.

15 (b) Monies of the Broadband Development Fund may only be expended for the following
16 purposes:

17 (1) Expenses for the administration of the Office of Broadband;

18 (2) Line extension advancement and development projects, including expansion of
19 existing fiber and cable networks;

20 (3) Major broadband project strategies, including new networks or major expansions of
21 existing networks;

22 (4) GigReady incentive projects, including a state incentive for ISP and local governments
23 and organizations to pool some of their federal American Rescue Plan Act allocations or other
24 local funding; and

25 (5) Wireless Internet Networks, including expansions or upgrades of existing fixed wireless
26 networks.

27 (c) Except funds expended for the administration of the Office of Broadband, monies of
28 the Broadband Development Fund may only be expended for projects authorized by subsection
29 (b) of this section that have been certified to the Joint Committee on Government and Finance by
30 the Director of the Office of Broadband or the Secretary of the Department of Economic
31 Development prior to making the expenditures.

32 (d) The Legislature of the State of West Virginia finds and declares that competition in any
33 market, more especially in the delivery of broadband internet services is eminently desirable. The
34 Legislature further finds that a competitive market, rather than a rate-regulated monopoly or
35 duopoly will promote and perpetuate improvement in customer service, technical service, terms,
36 conditions, and pricing. Accordingly, all agencies of state government are hereby directed to first
37 support expansion and enhancement of broadband internet services to unserved homes and
38 businesses and second to support expansion and enhancement of competition.

39 (e) Telecommunications facilities purchased, installed, or funded by any grant program
40 offered by this state shall be subject to:

41 (1) The provisions of 2 CFR 200 governing equipment and capital assets and any other
42 applicable federal law, rule, or regulation; and

43 (2) Any state law, rule, or regulation governing the sale of government or grant-funded
44 assets not in conflict with applicable federal law, rule, or regulation.

§31G-1A-8. Broadband Carrier Neutral and Open Access Infrastructure Development Fund.

1 (a) The Broadband Carrier Neutral and Open Access Infrastructure Development Fund is
2 hereby created in the State Treasury. The fund shall be administered by the Secretary of the
3 Department of Economic Development and shall consist of all moneys made available for the
4 purposes of this article from any source, including, but not limited to, all gifts, grants, bequests or
5 transfers from any source, any moneys that may be appropriated to the fund by the Legislature,

6 and all interest or other return earned from investment of the fund. Expenditures from the fund
7 shall be for the purposes set forth in subsection (b) of this section and are not authorized from
8 collections but are to be made only in accordance with appropriation by the Legislature and in
9 accordance with the provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the
10 provisions set forth in §11B-2-1 *et seq.* of this code: *Provided*, That for the fiscal year ending June
11 30, 2022, expenditures are authorized from collections rather than pursuant to an explicit
12 appropriation by the Legislature. Any balance, including accrued interest and other returns,
13 remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund
14 but shall remain in the fund and be expended as provided by this section.

15 (b) Moneys of the Broadband Carrier Neutral and Open Access Infrastructure
16 Development Fund may only be expended for the following purposes:

17 (1) Expenses for the administration of the Office of Broadband; and

18 (2) Line extension advancement and development projects, including expansion of
19 existing fiber and cable networks: *Provided*, That if a broadband project or extension is funded by
20 100 percent of public money, the project or extension shall be a carrier neutral and open access
21 project.

ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.

§31G-3-5. Mapping of Disturbances in Rights of Way.

1 (a) Beginning July 1, 2022, every agency of state government, every public service district,
2 and every county commission or other political subdivision must furnish to the Department of
3 Economic Development, in a timely manner, all information relating to:

4 (1) Any maps which they have; or

5 (2) Descriptions of routes (if maps are not available) which they have for any underground
6 disturbances in state rights of way or easements.

7 (b) This requirement shall not constitute a new duty to create or maintain maps for any
8 agency of state government, public service district, county commission or other political

9 subdivision, or any regulated public utilities or any other entity with facilities in the rights of way of
10 this state but does require any such information in their possession to be submitted to the
11 Department of Economic Development.

12 (c) If any such information in subsections (a) or (b) of this section has been previously
13 mapped by another department, division, agency, office, or commission, such information shall
14 not be required to be submitted by that public service district, county commission, or other political
15 subdivision again.

16 (d) The Department of Economic Development shall map those disturbances and limit
17 access to any map or related data to only those entities or persons that have signed a valid
18 confidentiality or non-disclosure agreement. Such mapping or data shall only be accessed or
19 reviewed for the limited purposes of:

20 (1) Considering possible routes for installation of telecommunications facilities or other
21 utilities;

22 (2) Engineering routes for installation of telecommunications facilities or other utilities;

23 (3) Study of existing telecommunications facilities or other utilities; or

24 (4) Improving, expanding, enhancing, and attaching to telecommunications facilities or
25 other utilities.

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-2a. Utility Pole Rights of Way and Easement Mapping Initiative.

1 (a) Beginning July 1, 2022, every pole owner must furnish to the Department of Economic
2 Development, in a timely manner, all information which they have required to be furnished by
3 attachers, since January 1, 2018, or from such time as necessary and available, to accurately
4 map the locations, class, number of attachments, weight, and such other information as the
5 Department of Economic Development deems necessary to accurately map and present the data,
6 including but not limited to all engineering reports or other documentation.

7 (b) The Department of Economic Development is hereby required to utilize this information
8 to produce a map, which is to include information, where available, delineating the following:

9 (1) Class of poles;

10 (2) Age of utility poles;

11 (3) Distance between poles;

12 (4) Weight between those spans; and

13 (5) What is attached in the communications space on those poles.

14 (c) A pole owner shall not be required to disclose the details of any electrical facilities
15 attached to the utility pole and the Department of Economic Development shall not publish
16 information related there to, except any information in the aggregate for that pole or the spans
17 between multiple poles related to weight thereon.

18 (d) This map is to be made available by the Department of Economic Development at no
19 cost to afford potential attachers considering projects to quickly gain information to determine
20 feasibility of a project. The Department of Economic Development shall require a confidentiality
21 or non-disclosure agreement to access any data mapped relating to the Utility Pole Rights of Way
22 and Easement Mapping Initiative. The Department of Economic Development shall limit access
23 to such maps to only those persons or entities interested in or engaging in the installation of
24 telecommunications facilities, their vendors, engineers, consultants, or other persons a potential
25 attacher reasonably needs to review such information.

26 (e) If a pole owner furnishes to a requesting telecommunications entity who has requested
27 to the pole owner to potentially attach to its poles,

28 (1) the latitude and longitude of all poles within the requested geographic area,

29 (2) in an electronic file or other format,

30 (3) at no cost; and

31 (4) once a non-disclosure agreement is entered into between pole owner and the
32 requesting telecommunications entity. The information thus provided by the pole owners can then
33 be used by the requesting entity to produce a map.

34 If a pole owner certifies in a sworn affidavit to the Department of Economic Development
35 that the owner has produced and made available to attachers such a map as described in this
36 section with at least the same information included and without cost to access, then the pole
37 owner shall not be required to share this information with the state and the department shall not
38 be required to map those utility poles. The department shall review any such map a pole owner
39 claims meets these requirements annually, and if the map produced by the pole owner is
40 materially deficient and has not met the requirements set-forth herein, the pole owner will once
41 again be required to provide the foregoing information to the department to be mapped.

ARTICLE 7. CONSUMER PROTECTIONS.

§31G-7-1. Existing Consumer Protections.

1 The Consumer Protection Division of the Office of the Attorney General is responsible for
2 effectuating and enforcing the following consumer protections in coordination with and the
3 assistance of the Office of Broadband and the Department of Economic Development:

4 (a) If a broadband service to a subscriber is interrupted for more than 24 continuous
5 hours, such subscriber shall, upon request, receive a credit or refund from the broadband operator
6 in an amount that represents the proportionate share of such service not received in a billing
7 period, provided such interruption is not caused by the subscriber, power outages, or other causes
8 for outages beyond the control of the provider;

9 (b) A broadband operator may not deny service, deny access, or otherwise discriminate
10 against subscribers, channel users, or any other citizens based on age, race, religion, sex,
11 physical handicap, political affiliation, political views or exercise of other speech protected by the
12 1st Amendment to the United States Constitution, or country of natural origin;

13 (c) A broadband operator shall provide subscribers 30 days advance written notice of any
14 changes to rates or charges, including the expiration of any promotion or special pricing that would
15 result in an increase in the subscribers billing or cost of service; and

16 (d) A broadband system operator shall inform subscribers and provide written notice to
17 subscribers that disputes regarding interrupted or substandard service or billing issues, which are
18 unresolved to satisfaction of the subscriber, can be filed as a complaint with the Consumer
19 Protection Division of the WV Attorney General's Office.

§31G-7-2. Fees.

1 (a) (1) No telecommunications provider may impose any fee, additional to the cost of
2 service, on fixed broadband internet services which is not an election of the customer or required
3 to be charged or assessed per connection by a government of competent jurisdiction.

4 (2) No telecommunications provider may require an individual customer to pay his or her
5 pro rata share of the corporation's tax burden as an enumerate portion of their bill.

6 (b) No telecommunications provider may impose a fee for a residential customer to receive
7 a paper bill or invoice for fixed broadband or cable television service.

§31G-7-3. Modems and other connection devices.

1 (a) (1) No telecommunications provider may impose any mandate that residential
2 customers be required to rent a modem from that provider.

3 (2) All residential customers are to be permitted to utilize or furnish their own modem, if the
4 network is built upon a non-proprietary, industry standard communication protocol.

5 (b) If there are not commercially available modems or devices to interface with the Wide
6 Area Network, the provider must offer the ability for a residential customer to purchase, rather
7 than rent, that hardware.

§31G-7-4. Competitive Access Infrastructure.

1 (a) Competitive access infrastructure is that infrastructure and related facilities which:

2 (1) Offer non-discriminatory, non-exclusive access to independent service providers and
3 other entities with reasonable costs comparable to that of the owner; and

4 (2) On reasonable and equal terms, including location, pricing, applicable tariffs, terms
5 and conditions.

6 (b) An assertion of competitive access telecommunications facilities may be demonstrated
7 by filing with the Public Service Commission of West Virginia that documentation necessary to
8 demonstrate the elements of a competitive access infrastructure defined in subsection (a) of
9 this section.

10 (c) Where referenced elsewhere in the Code of West Virginia, 1931 as amended, the
11 phrase "open-access networks" shall have the same meaning as "competitive access
12 infrastructure", as defined by this section.

§31G-7-5. Credits due to a customer.

1 All credits due to a customer for any reason are due to the customer at the time the
2 condition giving rise to them commences and shall be applied to the customer's bill as soon as is
3 practicable. Once notified, the customer has no further duty to seek credit after the condition
4 giving rise to such a credit is resolved.

ARTICLE 8. ELIGIBLE TELECOMMUNICATIONS CARRIERS.

§31G-8-1. Legislative Findings.

1 The Legislature of the State of West Virginia finds and declares that:

2 (1) The certification of Eligible Telecommunications Carriers is a responsibility primarily
3 delegated to the states.

4 (2) The proper utilization and oversight of disbursement of funds from the Universal
5 Service Fund established by the federal government and managed by the Federal
6 Communications Commission is in the public interest, convenience, and necessity.

7 (3) Failure to perform material obligations imposed upon an Eligible Telecommunications
8 Carrier in connection with disbursement of funding from the Universal Service Fund is detrimental
9 to the public interest, convenience, and necessity.

10 (4) Proper oversight and certification of compliance are necessary and proper for the
11 continuing issuance of Eligible Telecommunications Status and are in the public interest.

§31G-8-2. Definition.

1 "Eligible Telecommunications Carrier" means the status for a telecommunications carrier
2 to be eligible for Universal Service Fund support pursuant to 47 CFR § 54.201.

§31G-8-3. Eligible Telecommunications Carriers Status.

1 Notwithstanding any other provision of this code to the contrary, eligible
2 Telecommunications Carriers Status shall be issued by the Public Service Commission. Issuance
3 thereof shall not be unreasonably withheld, considering the recommendation of the Attorney
4 General, and only if the applicant for Eligible Telecommunications Carrier status is in compliance
5 with the following:

6 (a) The Attorney General shall check the Universal Service Administrative Company HUB
7 for any commitments, and/or obligations of Eligible Telecommunications Carriers in the state of
8 West Virginia.

9 (b) The Attorney General shall require certification of completion thereof and ongoing
10 compliance therewith, under penalty of perjury prior to making a favorable recommendation to the
11 Public Service Commission of the application to be an Eligible Telecommunications Carrier. The
12 Attorney General shall transmit all such recommendations which shall not be unreasonably
13 withheld to the Public Service Commission within 15 days of an application, after which time a
14 favorable recommendation will be deemed to be received.

§31G-8-4. Misrepresentation in Certification for Eligible Telecommunications Carrier Status, penalty.

1 (a) If the Attorney General finds evidence that an Eligible Telecommunications Carrier has
2 materially misrepresented compliance in their certification referenced in §31G-8-3 of this code,
3 notification of such material misrepresentation shall be transmitted to the West Virginia Public
4 Service Commission. The Public Service Commission shall conduct a hearing on the merits
5 thereof and if after a hearing the Eligible Telecommunications Carrier is found to be materially
6 non-compliant, the Public Service Commission shall assess a fine equal to the amount of any
7 subsidization received for which the commitment, assertion or obligation was established. Any
8 such fine shall be limited to such proportional amount as that which was awarded to the Eligible
9 Telecommunications Carrier for a particular area or act to be performed and shall not be construed
10 to include all amounts awarded statewide. The Public Service Commission or Attorney General
11 shall seek enforcement of any fine and any court of competent jurisdiction in this state shall order
12 payment and compliance with the order of the Public Service Commission associated herewith.
13 Funds from any fine shall be deposited into the Broadband Development Fund, less any
14 reasonable expenses and costs of the Public Service Commission in connection therewith.

15 (b) When such determination has been made, the Attorney General, and any other
16 Department, office, bureau, or agency and any political subdivision of this state, shall cause any
17 Eligible Telecommunications Carrier and its subsidiaries found to be materially non-compliant
18 under subsection (a) of this section or failing to make the certification required thereunder, to no
19 longer be certified as an Eligible Telecommunications Carrier and to be ineligible for any state
20 grants, awards, procurement, leasing, licensing other than a business license issued by the
21 Secretary of State or any business license by a political subdivision of this state, easement, right-
22 of-way access, or purchase until such material misrepresentation is cured: *Provided*, That nothing
23 in this section shall be construed or applied retro actively to prevent the installation, repair,
24 maintenance or other required work for any Carrier of Last Resort required to provide telephone

25 service in this state: *Provided however*, That nothing in this section shall be construed to prevent
26 an internet service provider from repairing or replacing telecommunications facilities in rights-of-
27 way or easements that internet service provider currently has facilities situated within.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor