

Broadband Deployment Advisory Committee

Model Code for States

Introduction to Model State Code document submission

The Model State Code Working Group is conducting its work through three Sub-Committees: State-wide Franchise, chaired by Allen Bell, Standardization, chaired by Heather Gold, and Rural Deployment, chaired by Marty Yudkovitz, all working independently, but coordinated via the Working Group's Vice-Chair, Karen Charles Peterson. The documents below consist of the **draft work product** of each of these three Sub-Committees.

Except where watermarked as "Vote Item," this Discussion Draft is NOT final work product and is presented to the BDAC with the following caveats:

- A. These working drafts include language and provisions that are still under discussion both within the Sub-Committees and within the overall Model Code For States Working Group, with issues remaining that have yet to be addressed and resolved;
- B. The three Sub-Committee working drafts have yet to be reconciled with each other and may contain conflicting or not fully coordinated recommendations;
- C. The drafts represent a consensus of the Sub-Committees, but not a unanimous approval.
- D. Additional provisions may be added prior to submission of the final document.
- E. Some items noted herein may be removed prior to submission of the final document.

It is anticipated that the State Model Code Working Group will reconcile these recommendations, make any additions, deletions, or other adjustments as it deems appropriate and necessary and will finalize its work product prior to the January meeting of the BDAC.

Model State Code

1. Short Title.

The Title of this Act shall be the State Broadband Deployment Act.

2. Purpose.

(a) It is hereby declared to be the public policy of this state to encourage the development and deployment of broadband infrastructure to better serve the public and further industrial economic development in this state. The state recognizes that broadband infrastructure is a necessary foundation for an innovative economy. To achieve the vision of ubiquitous broadband throughout the state, broadband must be

- i. Available. Broadband should be available to accomplish necessary goals from a technology-neutral perspective;
- ii. Affordable. For broadband to be available, it must be both affordable for the consumer to purchase and the provider to offer. The state understands that what is affordable may differ for different areas of the state; and
- iii. Ample. Broadband is considered ample if it provides enough bandwidth to meet personal, business, educational, and economic development needs and is capable of expansion to meet future needs.

(b) Additionally, the state finds that Broadband is

- i. Key and vital infrastructure to the State; and
- ii. Essential to
 1. The fundamental activities of an advanced society including education, economic development, health, the pursuit of science and technology, and the conduct of government at all levels; and
 2. Obtaining economic and educational equality among the different counties and regions of the state;
- iii. As a key and vital infrastructure:
 1. The first phase of the statewide broadband effort must be to make broadband accessible to every individual and organization in the state; and
 2. The second phase of the statewide broadband effort must be to establish the state as a leader in the leveraging of broadband in support of the activities essential to an advanced society.

- iv. The inclusion of broadband in state and county economic development plans should be encouraged.
- (c) State activities in support of county economic development plans shall give priority to county economic development plans that include regional broadband collaborations to assist in situations in which counties cannot independently establish broadband.
- (d) To achieve the aforesated objectives, it shall be the policy of this State to:
- i. Promote efforts to attain the highest quality of broadband capabilities in the state and to make high speed communication available to all residents and businesses in the state;
 - ii. Encourage the continued development and expansion of the broadband infrastructure to accommodate future growth and innovation in the state's economy;
 - iii. Facilitate the development of new or innovative business and service ventures in the information industry which will provide employment opportunities for the people of _____;
 - iv. Encourage greater cooperation between the public and private sectors in developing, deploying, and maintaining a robust state-wide broadband infrastructure;
 - v. Eliminate as much as possible any digital divide between urban and rural areas of the state and make access to broadband internet available to all residents and businesses regardless of location, as well as the elimination of, to greatest extent possible, any digital divide across an urban area; and

Recognize that communication and infrastructure of the various agencies of state government are valuable strategic assets belonging to the people of the state and should be managed accordingly.

Vote Item

Section 1: Statewide Franchise

Broadband Deployment Advisory Committee
State Model Code for Franchising Communication Services

The purpose of the State Model Code for Franchising Communication Services document is to provide a technology neutral model for States that want to simplify the franchise process by having one standard franchise for the entire state. This document or sections of this document could be incorporated into the broader Standardization document being proposed by a separate committee.

Chapter 1 Communications Service Provider Franchises.

Section 1 Definitions.

Section 2 Authorizations and Fees Generally.

Section 3 Statewide Communications Service Franchise.

Section 3.1 State Authorization to Provide Communications Service.

Section 3.2 Eligibility for State-Issued Communications Service Franchise.

Section 3.3 Public, Educational, and Governmental Access Channels for Franchisees Offering Video Service.

Section 3.4 Franchise Fees.

Section 4 Local Regulation of Communications Service Providers.

Section 5 Permitting.

Section 6 Buildout.

Section 7 Customer Service Standards.

Section 8 Discrimination Prohibited.

Section 9 Compliance.

Section 10 Overlapping and Attachments.

Section 11 Severability.

SECTION 1 Definitions.

(a) "Authority" means any county, district, municipality, franchise authority, or governmental subdivision of this state authorized by applicable Law to make legislative, quasi-judicial, or administrative decisions.

(b) "Cable Operator" is defined as set forth in Section 522(5) of Title 47 of the United States Code.

(c) "Cable Service" is defined as set forth in Section 522(6) of Title 47 of the United States Code.

(d) "Cable System" is defined as set forth in Section 522(7) of Title 47 of the United States Code.

(e) "Communications Facility" means a facility used by a Communications Service Provider in the provision of a Communications Service.

(f) "Communications Service" means

i. Video Service;

- ii. Information service, as defined in 47 U.S.C. § 153(24);
- iii. Telecommunications service, as defined in 47 U.S.C. § 153(53);
- iv. Wireless Service.

(g) “Communications Service Provider” means

- i. Video Service Provider;
- ii. provider of information service, as defined in 47 U.S.C. § 153(24);
- iii. telecommunications carrier, as defined in 47 U.S.C. § 153(51);
- iv. Wireless Provider.

(h) “Franchise” means an authorization or renewal of an authorization, regardless of whether the authorization is designated as a franchise, license, resolution, contract, certificate, agreement, or otherwise, to construct and operate a Communications Service in the public right-of-way.

(i) “Law” means any federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

(j) “Permit” means written permission required by an Authority to install, maintain, modify, mount, operate, or replace a Communications Facility upon, over, or under any public right-of-way or waters or on a public Utility Pole located within a public right-of-way.

(k) “Permit Applicant” means a Person who submits a Permit Application and is a Communications Service Provider.

(l) “Permit Application” means a request submitted by an Applicant to an Authority for a Permit to approve the installation, mounting, modification, operation, maintenance, or replacement of Communications Facilities upon, over, or under any public right-of-way or waters or on a public Utility Pole located within a public right-of-way.

(m) “Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an Authority.

(n) “Utility Pole” means a pole or similar structure that is used in whole or in part for Communications Services, electric distribution, lighting or traffic signals.

(o) “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in Section 522(20) of Title 47 of the United States Code.

- (p) "Video Service" means Video Programming services; Cable Service; or service provided on an open video system, as set forth in Section 573 of Title 47 of the United States Code; provided through Communications Facilities located at least in part in public rights-of-way without regard to delivery technology, including Internet protocol or other technology. This does not include Video Programming provided as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

COMMENT: This definition of Video Service is designed to be technology-agnostic, to ensure that any provider using a terrestrial network to deliver a multichannel video service is subject to the franchising requirements.

- (q) "Video Service Provider" means a Person providing Video Service.
- (r) "Wireless Infrastructure Provider" means any Person, including a Person authorized to provide telecommunications service in this state, who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but who is not a Wireless Service Provider.
- (s) "Wireless Provider" means a Wireless Infrastructure Provider or a Wireless Service Provider.
- (t) "Wireless Service" means any service provided, using licensed or unlicensed spectrum, whether at a fixed location or mobile, using Communications Facilities.
- (u) "Wireless Service Provider" means a Person who provides Wireless Service.

SECTION 2 Authorizations and Fees Generally.

- (a) The [State Agency] is the sole franchising authority for a state Franchise to provide Communications Service. Neither the [State Agency] nor any other Authority of the state may require the holder of a Franchise to obtain a separate franchise, license, certificate, or other authorization to provide any Communications Service, or otherwise impose any requirement on any holder of a state Franchise except as expressly provided in this chapter.
- (b) In addition to other reasonable rules or regulations that an Authority may adopt relating to the placement or maintenance of Communications Facilities in its roads or public rights-of-way, an Authority may require a Communications Service Provider that places or seeks to place Communications Facilities in its roads or public rights-of-way to register with the Authority and to provide the name of the registrant; the name, address, and telephone number of a contact person for the registrant; the number of the registrant's current certificate of authorization issued by the [State Agency] or the Federal Communications Commission; and proof of insurance or self-insuring status adequate to defend and cover claims related to the installation of communications facilities.

- (c) No Communications Service Provider shall be required to pay a fee, tax, or other assessment with respect to the provision of a Communications Service, except as expressly permitted by this chapter.

SECTION 3 Statewide Communications Service Franchise.

SECTION 3.1 State Authorization To Provide Communications Service.

- (a) A Person seeking to provide Communications Service in this state after [Effective Date], shall file an application for a state-issued Franchise with the [State Agency] as required by this Section.
- (b) An applicant for a state-issued Franchise shall submit to the [State Agency] an application that contains:
- i. The official name of the Communications Service Provider.
 - ii. The street address of the principal place of business of the Communications Service Provider.
 - iii. The federal employer identification number or the [State Agency's] document number.
 - iv. The name, address, and telephone number of an officer, partner, owner, member, or manager as a contact person for the Communications Service Provider to whom questions or concerns may be addressed.
 - v. A duly executed affidavit signed by an officer, partner, owner, or managing member affirming and containing:
 1. That the applicant is fully qualified under the provisions of this chapter to file an application and affidavit for a certificate of franchise authority.
 2. That the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering Communications Service in this state.
 3. That the applicant agrees to comply with all applicable federal and state laws and regulations, to the extent such state laws and rules are not in conflict with or superseded by the provisions of this Section or other applicable state law.
 4. That the applicant agrees to comply with all state laws and rules and municipal and county ordinances and regulations regarding the placement and maintenance of Communications Facilities in the public rights-of-way and on Utility Poles in the public rights-of-way that are applicable to Communication Service Providers in accordance with Section [5].

5. A description of the service area for which the applicant seeks a certificate of franchise authority provided in terms of facilities that may or may not be consistent with municipal or county boundaries, except that any portion of a facility within municipal or county boundaries will remain subject to an existing cable or video franchise agreement until the earlier of the agreement's expiration or termination.
 6. The location of the applicant's principal place of business, the names of the applicant's principal executive officers, and physical address.
 7. That the applicant will file with the department a notice of commencement of service within five business days after first providing service in each area described in subparagraph [5] of this Section.
 8. A statement affirming that the applicant will notify the department of any change of address or contact person.
 9. The applicant's system shall comply with the Federal Communications Commission's rules and regulations of the Emergency Alert System.
- (c) Before the tenth business day after the [State Agency] receives the application, the [State Agency] shall notify the applicant whether the application and affidavit described in subsection [(b)] are complete. If the [State Agency] rejects the application and affidavit, the [State Agency] shall specify with particularity the reasons for the rejection and permit the applicant to amend the application of affidavit to cure any deficiency. The [State Agency] shall act upon the amended application or affidavit within ten days after the [State Agency's] receipt of the amended application or affidavit.
- (d) The [State Agency] shall issue a certificate of franchise authority to the applicant within 15 business days after receipt of an accepted application. The certificate of franchise authority issued by the department shall contain:
- i. The name of the Franchise-holder and its identification number.
 - ii. A grant of authority to provide Communications Service as requested in the application.
 - iii. A grant of authority to construct, maintain, and operate Communications Facilities through, upon, over, and under any public right-of-way or waters, or on any Utility Pole in any public right-of-way, subject to the permitting requirements in Section [5].

- iv. A statement that the grant of authority is subject to lawful operation of the Communications Service by the applicant or its successor in interest.
 - v. A statement that describes the service area for which this certificate of authority applies.
 - vi. A statement that includes the issuance date that shall be the effective date of the commencement of this authority.
- (e) If the department fails to act on the accepted application within [30] days after receiving a complete application, the application shall be deemed approved.
- (f) A Franchise-holder that seeks to include additional service areas in its current certificate shall file an amendment to the certificate with the [State Agency]. Such amendment shall specify the name and address of the Franchise-holder, the new service area or areas to be served, consistent with Section [3.1(b)(v)(5)], but need not be coextensive with municipal or county boundaries, and the effective date of commencement of operations in the new service area or areas. Such amendment shall be filed with the [State Agency] within five business days after first providing service in each such additional area.
- (g) The Franchise issued by the [State Agency] is fully transferable to any successor in interest to the applicant to which the certificate is initially granted. A notice of transfer shall be filed with the department and the relevant municipality or county within 14 business days following the completion of such transfer.
- (h) The Franchise may be terminated by the Communications Service Provider by submitting notice to the [State Agency].
- (i) A Franchise applicant may challenge a rejection of an application by the [State Agency] in a court of competent jurisdiction through a petition for mandamus.
- (j) In executing the provisions of this Section, the [State Agency] shall function in a ministerial capacity accepting information contained in the application and affidavit at face value. The applicant shall ensure continued compliance with all applicable business formation, registration, and taxation provisions of law.
- (k) A parent company may file a single application covering itself and all of its subsidiaries and affiliates intending to provide Communications Service in the service areas throughout the state as described in Section [3.1(b)(v)(5)], but the entity actually providing such service in a given area shall otherwise be considered the Franchise-holder under this act.
- (l) Beginning five years after approval of the initial Franchise issued by the [State Agency], and every five years thereafter, the Franchise-holder shall

update the information contained in the original application for a certificate of franchise. Any Franchise-holder that fails to file the updated information and pay the processing fee on the five-year anniversary dates shall be subject to cancellation of its state-issued certificate of franchise authority if, upon notice given to the Franchise-holder at its last address on file with the [State Agency], the Franchise-holder fails to file the updated information and pay the processing fee within 30 days after the date notice was mailed. The application and processing fees imposed in this Section shall be paid to the [Agency].

- (m) The application for a Franchise-holder's initial certificate of franchise shall be accompanied by a one-time fee of [\$10,000]. At the time of filing the information update as required in Section [3.1(l)], the Franchise-holder shall pay a processing fee of \$1,000. The initial fee and each subsequent information update processing fee shall offset any fee imposed by the [State Agency] consistent with the requirements of Section 542(b) of Title 47 of the United States Code.

SECTION 3.2 Eligibility for State-Issued Communications Service Franchise.

- (a) After [Effective Date], any Communications Service Provider that holds a Franchise to provide any Communications Service in this state is immediately eligible at its option to apply for a state-issued certificate of franchise authority under this Section and shall file a written notice with the applicable municipality or county in which the provider provides Communications Service simultaneously with any filing with the [State Agency] under this Section. The applicable municipal or county franchise is terminated under this Section on the date the [State Agency] issues the state-issued certificate of franchise authority.
- (b) If a franchised Communications Service Provider has been granted a state-issued certificate of franchise authority that covers all or a portion of a municipality or county, any obligation under any existing municipal or county franchise that exceeds the obligations imposed on the Franchise-holder in the area covered by the certificate shall be against public policy and void.

SECTION 3.3 Public, Educational, and Governmental Access Channels for Franchisees Offering Video Services.

- (a) A Video Service Provider holding a Franchise, not later than 180 days following a request by a municipality or county within whose jurisdiction the Franchise-holder is providing Video Service, shall designate a sufficient amount of capacity on its network to allow the provision of public, educational, and governmental access channels for noncommercial programming as set forth in this Section consistent with the requirements of Subchapter V-A of Chapter 5 of Title 47 of the United States Code.

- (b) Consistent with the requirements of Subchapter V-A of Chapter 5 of Title 47 of the United States Code, a Video Service Provider holding a Franchise shall designate a sufficient amount of capacity on its network to allow the provision of the same number of public, educational, and governmental access channels or their functional equivalent that a municipality or county has activated under the Video Service Provider's pre-existing franchise agreement as of [Effective Date]. For the purposes of this Section, a public, educational, or governmental channel is deemed activated if the channel is being used for public, educational, or governmental programming within the municipality or county. The municipality or county may request additional channels or their functional equivalent permitted under the Video Service Provider's pre-existing franchise agreement as of [Effective Date]. Upon the expiration of the Video Service Provider's pre-existing franchise agreement or within six months after a request of a municipality or county for an additional channel or its functional equivalent, a public access channel or capacity equivalent may be furnished after a polling of all subscribers of the Video Service in their service area. The usage of one public access channel or capacity equivalent shall be determined by a majority of all the provider's subscribers in the jurisdiction. The Video Service subscribers must be provided with clear, plain language informing them that public access is unfiltered programming and may contain adult content.
- (c) If a municipality or county does not have public, educational, or governmental access channels activated under the Video Service Provider's pre-existing franchise agreement as of [Effective Date], after the expiration date of the pre-existing franchise agreement and within six months after a request by the municipality or county within whose jurisdiction a Franchise-holder is providing Video Service, the Franchise-holder shall furnish up to two public, educational, or governmental channels or their functional equivalent, consistent with the requirements of Subchapter V-A of Chapter 5 of Title 47 of the United States Code. The usage of the channels or their functional equivalent shall be determined by a majority of all the Video Service Provider's subscribers in the jurisdiction in order of preference of all Video Service subscribers. Video Service subscribers must be provided with clear, plain language informing them that public access is unfiltered programming and may contain adult content.
- (d) If a municipality or county has not used the number of access channels or their functional equivalent permitted by subsection (c), access to the additional channels or their functional equivalent allowed in subsection (c) shall be provided upon six months' written notice.
- (e) A public, educational, or governmental access channel authorized by this Section is deemed activated and substantially used if the channel is being used for public, educational, or governmental access programming within the municipality or county for at least ten hours per day on average, of which at least five hours must be nonrepeat programming and as measured on a quarterly basis. Static information screens or

bulletin-board programming shall not count toward this ten-hour requirement. If the applicable access channel does not meet this utilization criterion, the Video Service Provider shall notify the applicable access provider in writing of this failure. If the access provider fails to meet this utilization criterion in the subsequent quarter, the Video Service Provider may reprogram the channel at its discretion. The Video Service Provider shall work in good faith with the access provider to attempt to provide future carriage of the applicable access channel within the limits of this Section if the access provider can make reasonable assurances that its future programming will meet the utilization criteria set out in this subsection.

- (f) A Video Service Provider may locate any public, educational, or governmental access channel on its lowest digital, non-basic tier of service offered to the provider's subscribers. A Video Service Provider must notify its customers and the applicable municipality or county at least 120 days prior to relocating the applicable educational or governmental access channel.

COMMENT: The addition of "non-basic" in the above provision is intended to clarify that PEG need not be carried on the basic tier. Is this clear or is there a better means conveying this intent?
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- (g) Consistent with the requirements of Subchapter V-A of Chapter 5 of Title 47 of the United States Code, the operation of any public, educational, or governmental access channel or its functional equivalent provided under this Section shall be the responsibility of the municipality or county receiving the benefit of such channel or its functional equivalent, and a Video Service Provider holding a Franchise bears only the responsibility for the transmission of such channel content. A Video Service Provider holding a Franchise shall be responsible for the cost of providing the connectivity to one origination point for each public, educational, or governmental access channel up to 200 feet from the Franchise-holder's activated Video Service distribution plant.
- (h) The municipality or county shall ensure that all transmissions, content, or programming to be transmitted over a channel or facility by a Franchise-holder are provided or submitted to the Video Service Provider in a manner or form that is capable of being accepted and transmitted by a provider without any requirement for additional alteration or change in the content by the provider, over the particular network of the Video service Provider, which is compatible with the technology or protocol used by the Video Service Provider to deliver services. To the extent that a public, educational, or governmental channel content provider has authority, the delivery of public, educational, or governmental content to a Franchise-holder constitutes authorization for the Franchise-holder to carry such content, including, at the provider's option, authorization to carry the content beyond the jurisdictional boundaries of the municipality or county.

- (i) Consistent with the requirements of Subchapter V-A of Chapter 5 of Title 47 of the United States Code, where technically feasible, a Video Service Provider holding a Franchise and a pre-franchised Cable Service provider shall use reasonable efforts to interconnect their networks for the purpose of providing public, educational, and governmental programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Video Service Providers holding a Franchise and pre-franchised Cable Service providers shall negotiate in good faith, and incumbent cable service providers may not withhold interconnection of public, educational, and governmental channels. The requesting party shall bear the cost of such interconnection.
- (j) A Video Service Provider holding a Franchise is not required to interconnect for, or otherwise to transmit, public, educational, and governmental content that is branded with the logo, name, or other identifying marks of another Video Service Provider, and a municipality or county may require a Video Service Provider to remove its logo, name, or other identifying marks from public, educational, and governmental content that is to be made available to another provider. This subsection does not apply to the logo, name, or other identifying marks of the public, educational, or governmental programmer or producer.
- (k) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section, consistent with the requirements of Subchapter V-A of Chapter 5 of Title 47 of the United States Code.

SECTION 3.4 Franchise Fees.

- (a) The [State Agency] shall determine and impose a fee to be paid by franchised Communications Service Providers that shall cover the direct costs of [the State Agency] and any local Authorities in the administration and implementation of the franchising process described in this chapter. Such fee shall be nondiscriminatory, technology-neutral, competitively neutral, and no more than is necessary to recover said costs.
- (b) The fee to be paid by franchised Video Service Providers shall be imposed solely in relation to its provision of Video Service, and consistent with the requirements and limitations ascribed in Section 542(b) of Title 47 of the United States Code.

SECTION 4 Local Regulation of Communications Service Providers.

- (a) Applicability. The provisions of this Section apply to Authorities and Communications Service Providers that are authorized to construct and install Communications Facilities in the public rights-of-way or on Utility Poles in the public rights-of-way.
- (b) Rules or regulations imposed by an Authority relating to Communications Service Providers placing or maintaining Communications Facilities in its

roads or rights-of-way must be generally applicable to all Communications Service Providers.

- (c) Registration described in Section [2(b)] does not establish a right to place or maintain, or priority for the placement or maintenance of, a communications facility in rights-of-way within the Authority's jurisdiction. Each Authority may regulate and manage municipal and county roads or rights-of-way in exercising its police power. Any rules or regulations adopted by an Authority which govern the occupation of its roads or rights-of-way by Communications Service Providers must be related to the placement or maintenance of Communications Facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way within the Authority's jurisdiction.
- (d) An Authority may not use its jurisdiction over the placement of Communications Facilities in its roads and public rights-of-way as a basis for asserting or exercising regulatory control over a Communications Service Provider regarding matters within the exclusive jurisdiction of the [State Agency] or the Federal Communications Commission, including, but not limited to, the operations, systems, qualifications, services, service quality, and prices of a Communications Service Provider.
- (e) An Authority shall allow an authorized Communications Service Provider to install, place, maintain, modify, replace, repair, or operate Communications Facilities within a public right-of-way and shall provide a Communications Service Provider with comparable, nondiscriminatory, and competitively neutral access to the public right-of-way in accordance with the provisions of Section [5].
- (f) An Authority may require the issuance of a Permit in accordance with Section [5] and shall accept Permit Applications and shall process, charge any fees for, and issue Permits subject to requirements in Section [5].
- (g) An Authority may not impose additional requirements on a Communications Service Provider, including, but not limited to, financial, operational, and administrative requirements, except as expressly permitted by this chapter. An Authority may not impose on activities of a Communications Service Provider a requirement:
 - i. That particular business offices be located in geographic area covered by the Authority's jurisdiction;
 - ii. Regarding the filing of reports and documents with the Authority that are not required by state or federal law and that are not related to the use of the public right-of-way. Reports and documents other than schematics indicating the location of facilities for a specific site that are provided in the normal course of the Authority's permitting process, or that are otherwise required in the normal course of such permitting process shall not be considered related to the use of the public right-of-

way for Communications Service Providers. A municipality or county may not request information concerning the capacity or technical configuration of a Communications Service Provider's facilities;

- iii. For the inspection of a Communications Service Provider's business records; or
- iv. For the approval of transfers of ownership or control of a Communications Service Provider's business, except that an Authority may require a Franchise-holder to provide notice of a transfer within a reasonable time.

SECTION 5 Permitting.

- (a) Submission. An Authority shall make available to Permit Applicants a mechanism whereby Permit Applicants may submit electronically any Permit Application to an Authority for a Permit to approve the installation, mounting, modification, operation, maintenance, or replacement of Communications Facilities upon, over, or under any public right-of-way or waters or on a public Utility Pole located within a public right-of-way.
- (b) Content. A Permit Applicant may not be required to provide more information to obtain a Permit than is necessary to demonstrate the Permit Applicant's compliance with applicable codes for the placement of Communications Facilities in the locations identified in the Permit Application.
- (c) Timing & Form of Decisions on Permits.
 - i. Within ten days of receiving a Permit Application, an Authority must determine and notify the Permit Applicant whether the Permit Application is complete. If the Permit Application is incomplete, the Authority must specifically identify the missing information and permit the applicant to cure any deficiencies within ten days of receiving notice thereof. If the Authority fails to notify the Permit Applicant within the ten-day period, as required, the Permit Application will be deemed complete and duly filed.
 - ii. An Authority shall act on a Permit Application not later than [30] days after the date on which the Permit Application is duly filed with the Authority. If the Authority fails to act on the Permit Application within such period, or denies the Permit Application but fails to contemporaneously and publicly release a written decision setting forth the reasons for the denial as required under subsection [(b)(iii)] of this Section, the Permit Application shall be deemed to be granted.
 - iii. Any decision to approve or deny a Permit Application shall be in writing and transmitted to the Permit Applicant by the mode of transmission of the Permit Applicant's choosing.

- iv. Any decision by an Authority to deny a Permit Application shall be supported by substantial evidence contained in a written record, and written grounds for the denial shall be publicly released contemporaneously with the denial.
- (d) Permit Scope. Any Permit issued by the Authority shall be applicable to a geographic area that is the smaller of –
- i. An area that is coextensive with the geographic area within the boundaries of the Authority’s jurisdiction; or
 - ii. An area that is within the boundaries of the Authority’s jurisdiction and contains no fewer than –
 - 1. 20,000 households, or
 - 2. 300 route miles of underground installation.
- (e) Permit Duration. Any Permit issued by an Authority shall be valid for a minimum of 180 calendar days.
- (f) Permit Fees. An Authority may only charge a fee for a Permit under this Section if such a fee is required for similar types of commercial developments and permits within the Authority’s jurisdiction. An Authority shall not recover from a Permit Applicant costs caused by another entity’s activity or inactivity in the right of way. Any fee assessed by an Authority for any Permit under this Section shall be –
- iii. Nondiscriminatory,
 - iv. Technology-neutral,
 - v. Competitively neutral among users of the rights-of-way, and
 - vi. Reasonable and commensurate with the direct and actual cost of the regulatory activity, including issuing and processing Permits, plan reviews, physical inspection, and direct administrative costs.
- (g) Limitations.
- i. No Authority shall:
 - 1. Impose on a Communications Service Provider, as a condition of obtaining a Permit, any requirement unrelated to the specific Communications Facilities for which the Permit is sought, including in-kind contributions to the Authority, such as installing Communications Facilities for the Authority, unless the Communications Service Provider agrees in writing to the in-kind contribution and the Authority agrees to pay a pro-rata share of the costs associated with the in-kind contribution; or

2. Require such providers to address conditions that were not caused by the providers' activities in connection with which the requirement is being imposed.
- ii. The issuance of, and terms and conditions contained within, any Permit shall be competitively neutral and nondiscriminatory.
- iii. If an Authority includes an undergrounding requirement in a Permit and the undergrounding requirement is solely for beautification purposes, the Authority shall bear any additional costs associated with the requirement.

SECTION 6 Buildout.

- (a) No Authority may impose any buildout, system construction, or service deployment requirements on a Communications Service Provider within five years of the later of -
 - i. The date the Communications Service Provider began rendering service within this state, or
 - ii. [Effective Date].
- (b) After the five-year period specified above in subsection (a) concludes, an Authority may negotiate buildout, system construction, or service deployment requirements with a Communications Service Provider that are limited to areas within the Authority's jurisdiction that are unserved by that Communications Service Provider at the time the aforementioned negotiations conclude.

SECTION 7 Customer Service Standards.

- (a) All Communications Service Providers shall comply with the customer service requirements set forth in Section 76.309 of Title 47 of the Code of Federal Regulations.

COMMENT: The customer service requirements in Section 76.309 of the FCC's rules are specific to cable service and therefore may not consistently cover other communications services. Is there a better source for customer service standards to which a model code should point?

- (b) The [State Agency] shall have the sole Authority to respond to all Communications Service customer complaints.
- (c) The [State Agency] shall receive service quality complaints from customers of a Communications Service Provider and shall address such complaints in an expeditious manner by assisting in the resolution of such complaint between the complainant and the Communications Service Provider. The [State Agency] may adopt any procedural rules pursuant to [Authorizing Law] necessary to administer this Section, but shall not have any authority to

impose any customer service requirements on Video Service Providers inconsistent with those contained in Section 76.309 of Title 47 of the Code of Federal Regulations.

SECTION 8 Discrimination Prohibited.

- (a) A Communications Service Provider may not deny access to service to any individual or group of potential residential subscribers because of the race or income of the residents in the local area in which the individual or group resides. Enforcement of this Section shall be in accordance with [Authorizing Law].

SECTION 9 Compliance. If a Communications Service Provider is found by a court of competent jurisdiction not to be in compliance with the requirements of this chapter, the Communications Service Provider shall have a reasonable period of time to cure such noncompliance.

SECTION 10 Overlashing and Attachments.

- (a) A Communications Service Provider need not obtain a Permit or any other additional authorization if the Communication Service Provider intends only to overlash communications wires or cables onto or attach equipment to communications wires or cables the Communications Service Provider previously attached to a Utility Pole with the Utility Pole owner's consent under the following circumstances -

- i. The Communications Service Provider must provide the Utility Pole owner with written notice 15 business days prior to undertaking the overlashing or attachment. The notice must identify no more than one hundred affected poles and describe the additional communications wires or cables to be overlashed or equipment to be attached so that the owner can determine any impact of the overlashing or attachment on the poles or other occupants' attachments. The notice period does not begin until the owner receives a complete written notice that includes the following information:
 1. The size, weight per foot, and number of wires or cables to be overlashed or equipment to be attached; and
 2. Maps showing the location of the affected poles, including pole numbers if available.
- ii. The Communications Service Provider must provide the Authority in whose jurisdiction the overlashing or attachment work will occur with written notice 15 business days prior to undertaking overlashing or attachment work that is likely to cause a disruption to vehicular traffic or other activity in or abutting the right-of-way. The notice must identify the area likely to be subject to the disruption and the date and approximate time at which the disruption is likely to occur.

- iii. A single Communications Service Provider may not submit more than five notices or identify more than a total of one hundred poles for overlashing or attachment in any ten business day period. The applicable time period for responding to multiple notices begins on the date of the last notice the owner receives from the Communications Service Provider within the ten business day period.
- iv. The Communications Service Provider may proceed with the overlashing or attachment described in the notice unless the Utility Pole owner provides a written response, within ten business days of receiving the occupant's notice, prohibiting the overlashing or attachment as proposed. The owner may recover from the requesting Communications Service Provider the costs the owner actually and reasonably incurs to inspect the facilities identified in the notice and to prepare any written response. The Communications Service Provider must correct any safety violations caused by its existing attachments before overlashing additional wires or cables on or attaching additional equipment to those attachments.
- v. The Utility Pole owner may refuse to permit the overlashing or attachment described in the notice only if, in the owner's reasonable judgment, the overlashing or attachment would have a significant adverse impact on the poles or other occupants' attachments. The refusal must describe the nature and extent of that impact, include all relevant information supporting the owner's determination, and identify the make-ready work that the owner has determined would be required prior to allowing the proposed overlashing or attachment. The parties must negotiate in good faith to resolve the issues raised in the owner's refusal.
- vi. A utility's or Communications Service Provider's wires, cables, or equipment may not be overlashed on or attached to another Utility Pole occupant's attachments without the Utility Pole owner's consent and unless the utility or Communications Service Provider has an attachment agreement with the owner that includes rates, terms, and conditions for overlashing on or attaching equipment to the attachments of other occupants.

SECTION 11 Severability. If any provision of Sections. 1-10 or the application thereof to any Person or circumstance is held invalid, such invalidity shall not affect other provisions or application of Sections 1-10 which can be given effect without the invalid provision or application, and to this end the provisions of Sections 1-10 are severable.

Section 2: Standardization

STANDARDIZATION INDEX

ARTICLE 1: TITLE, OVERVIEW AND STRATEGIC GOALS

ARTICLE 2: DEFINITIONS

ARTICLE 3: NETWORK SUPPORT INFRASTRUCTURE REGISTER

ARTICLE 4: RIGHTS OF ACCESS TO EXISTING NETWORK SUPPORT
INFRASTRUCTURE

ARTICLE 5: SPECIAL PROVISIONS FOR RIGHTS OF ACCESS TO POLES IN THE
COMMUNICATIONS SPACE

ARTICLE 6: SPECIAL PROVISIONS FOR RAILROAD CROSSINGS

ARTICLE 7: NEW AND MODIFIED INFRASTRUCTURE TO BE BROADBAND
READY

ARTICLE 8: BUILDINGS AND NETWORK ACCESS POINTS TO BE BROADBAND
READY

ARTICLE 9: SPECIAL PROVISIONS FOR WIRELESS NETWORKS

ARTICLE 10: STATE BROADBAND INFRASTRUCTURE COMMISSION

1. TITLE, OVERVIEW AND STRATEGIC GOALS

1. Short Title

The short title of this legislation is: *Model Code for Accelerating Broadband Deployment and Investment*

2. Overview

- 2.1. The Model Code (“**Model Code**”) for Accelerating Broadband Deployment and Investment provides a customizable framework designed to streamline the deployment and increase the availability of wireline and wireless Broadband communications Infrastructure facilities by reducing the time, cost and environmental impact of rolling-out Communications Networks. The Model Code recognizes that the rapid, efficient and affordable construction and installation of Communications Networks is essential to achieving critical State policies. The social, educational, economic, and civic benefits of Broadband have been widely documented. Promoting accelerated Broadband deployment and investment will help to achieve the State’s objectives of ensuring its residents, schools and other institutions, businesses and governments have access to robust, ubiquitous wireline and wireless Broadband and other services. It will attract investment in communications Infrastructure that will generate jobs and strengthen the State’s economy.
- 2.2. Unless otherwise stated, the articles of the Model Code apply to both public and private sector stakeholders.
- 2.3. In the Model Code, words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires. References to including and include(s) shall be deemed to mean respectively, including without limitation and include(s) without limitation.
- 2.4. The Articles of the Model Code are severable and may be adopted in whole or in part.

3. Strategic Goals

The following are State goals that should be considered as the Commission executes its regulatory duties under the Model Code:

- 3.1 Accelerating broadband deployment by reducing and/or removing regulatory barriers to infrastructure investment.
- 3.2 Defining the role of state regulatory agencies and of state broadband councils in deployment.

3.3 Promoting more robust deployment at the municipal level, as well as other aspects of broadband deployment that involve state governments.

4. Encouraging broadband deployment to all Americans.

ARTICLE 2: DEFINITIONS

1. **“Advisory Committee”** means the advisory committee of industry experts formed by the Commission.
2. **“Antenna”** means communications equipment that transmits and/or receives over-the-air electromagnetic signals used in the provision of Wireless Services.
3. **“Applicable Codes”** means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement this subsection.
4. **“Applicant”** means a person who submits an Application under this Model Code.
5. **“Application”** means a request submitted by an Applicant to an Authority for a permit to construct new facilities or to Collocate Facilities in, along, or outside rights-of-way.
6. **“As-Built Report”** means a report indicating any changes to an Attachment caused by Make Ready, including a unique field label identifier, the pole number if available, and the address or coordinates of the Attachment.
7. **“Attacher”** means any person, corporation, or other entity or its agents or contractors seeking to fasten or affix any Attachment in the public rights-of-way.
8. **“Attachment”** means communications equipment, Antenna, line, or Facility of any kind fastened or affixed to a Utility Pole or similar structure, or its guys and anchors used to support communications Attachments.
9. **“Attachment Application”** means the Application made by an Attacher to an Owner for consent to attach such Attacher’s Attachments to the Owner’s Utility Pole or similar structure, or its guys and anchors, used to support communications.
10. **“Authority”** means a State, county, municipality, district or subdivision thereof, or similar entity authorized by applicable law to make legislative, quasi-judicial, or administrative decisions concerning an Application, but shall not include State courts having jurisdiction over an Authority.
11. **“Authority Pole”** means a Utility Pole owned or operated by an Authority in the right-of-way, including those that are used to provide lighting or traffic

control functions and those that are owned by a municipal electric Utility or a Utility Pole used to support municipally owned or operated electric distribution facilities.

12. **“Broadband”** means wide bandwidth data transmission systems which can transport multiple signals and traffic types and which, in the context of Internet access, is used to mean any form of high-speed Internet access.
13. **“Civil Works”** means any building or engineering works undertaken by a state, county, municipality, or similar governmental entity which, taken as a whole with other related works, constructed under the authority of the government entity, that are sufficiently material to require a License in order to conduct such works.
14. **“Collocate”** or **“Collocation”** means to install, mount, maintain, modify, operate, or replace one or more Wireless Facilities on, under, within, or adjacent to a Wireless Support Structure or Utility Pole. The term does not include the installation of a new Utility Pole or Wireless Support Structure in the rights-of-way.
15. **“Commission”** means the State Broadband Infrastructure Authority, Department of the State Public Utilities Commission or equivalent as may be determined by the State.
16. **“Communications Network”** means any Network used or authorized to be used to transmits electronic, optical or radio (whether using regulated frequencies or otherwise) signals including, without limitation, sounds, images and data, and whether using wired, wireless or radio network.
17. **“Communications Provider”** means any Wireless Provider or any other provider of communications Facilities or services to customers; including any Communications Network operated by a county, municipality, or similar governmental entity.
18. **“Complex Make Ready”** means Make Ready that will cause or would reasonably be expected to cause a customer outage, as determined by the contractor chosen by the new attacher from the approved contractor listed maintained by the pole owner.
19. **“Conduit”** means a container, pipe or tube, often underground, designed to contain and protect communications equipment including optical fiber, cables and other forms of communications equipment.
20. **“Crossing”** means a Facility constructed over, under, or across a Railroad right-of-way. The term does not include longitudinal occupancy of Railroad right-of-way.
21. **“Duct”** means a container, pipe or tube, often above ground, designed to contain and protect communications equipment including optical fiber, cables and other forms of communications equipment.

- 22.** "Facility" means any Facility or item of private property placed over, across, or underground for use in connection with the storage or conveyance of:
- 22.1. water;
 - 22.2. sewage;
 - 22.3. electronic, telephone, or telegraphic communications;
 - 22.4. fiber optics;
 - 22.5. cable television;
 - 22.6. electric energy;
 - 22.7. oil;
 - 22.8. natural gas; or
 - 22.9. hazardous liquids.
- Facility includes, but is not limited to, pipes, sewers, Conduits, cables, valves, lines, wires, manholes, and Attachments.
- 23.** "FCC" means the Federal Communications Commission.
- 24.** "Infrastructure" means any physical Infrastructure of any nature including Network Support Infrastructure or otherwise.
- 25.** "License" means the documented terms of approval of Civil Works by any competent Authority which regulates or otherwise controls the carrying out of such Civil Works.
- 26.** "Make Ready" means the transfer, relocation, rearrangement, or alteration of a Pre-Existing Third Party User's communications equipment, Antenna, line or Facility of any kind necessary to provide space for Attacher to install an Attachment.
- 27.** "Micro Wireless Facility" means a Small Wireless Facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior Antenna, if any, no longer than 11 inches.
- 28.** "Model Code" means the Model Code for Accelerating Broadband Deployment and Investment.
- 29.** "Network" means any Network Support Infrastructure used or authorized to be used by a Communications Provider or Network Support Infrastructure Owner to provide Network Services.
- 30.** "Network Access Point" means a physical connection point, whether located inside or outside any building or Infrastructure that enables Communications Providers to access the necessary Network Support Infrastructure so as to be

able to provide Network Services to Subscribers, but does not include access to inside wiring nor any Wireless Facility.

31. “Network Support Infrastructure” means:

31.1. any aspect of the physical Infrastructure used or authorized to be used by a Network Support Infrastructure Owner to provide Network Services, provided that such physical Infrastructure carries, contains, houses or supports the active component of the Network Service being provided without itself becoming an active component of the Network including, without limitation, Antenna installations, buildings, cabinets, communications exchanges, Conduits, Ducts, inspection chambers, manholes, masts, Network Access Points, Network components within buildings, pipes, poles, roads, railways, towers, Utility Poles, waterways, equipment for transmitting wireless or satellite signals or any other physical part of a Network or any legal rights to use, share or access such

31.2. For the avoidance of doubt, the active components of a Communications Network including, without limitation, cables conveying electricity, dark fiber conveying optical signals, fiber optic cables, Antennas conveying wireless or radio frequencies and components used or intended to be used for carrying drinking water for human consumption shall be excluded from this definition of Network Support Infrastructure.

32. “Network Support Infrastructure Owner” means a county, municipality, state or similar governmental entity providing or authorized to provide Networks including:

32.1. Utility networks including, without limitation, any physical Infrastructure used or authorized to be used to provide the service, transport or distribution of communications, gas, electricity, public lighting, heating, water, sewage and drainage; or

32.2. Transportation networks including any physical Infrastructure used or authorized to be used to provide transportation services, including, without limitation, railways, roads, ports and airports; or

32.3. Waterways networks including without limitation, canals, rivers, viaducts, navigation channels and other waterways.

33. “Network Services” means any services that Communications Providers or Network Support Infrastructure Owners provide or are authorized to provide to Subscribers.

34. “NSIR” means the Network Support Infrastructure Register.

35. “NSIR Center” means a center certified by the Commission to facilitate the collection of NSIR data.

36. **“Owner”** means a person, corporation, or other entity owning a Utility Pole or similar structure in the public rights-of-way on which Facilities for the distribution of electricity or communications are or may be located.
37. **“Overlash”** means the typing of additional communications facilities to those previously attached to Utility Pole.
38. **“Parallel”** or **“Paralleling”** means a Network Support Infrastructure that runs adjacent to and alongside the lines of a Railroad for no more than one mile, or another distance agreed to by the parties, after which the Network Support Infrastructure crosses the Railroad lines, terminates, or exits the Railroad right-of-way.
39. **“PreApproved Contractor”** means contractors the Utility already has authorized to work on its poles. These contractors have met the pole owner’s own standards for skill, experience, and safety.
40. **“Pre-Existing Third Party User”** means the owner of any pre-existing Attachment located in the public rights-of-way.
41. **“Railroad”** means any association, corporation, or other entity engaged in operating a common carrier by rail, or its agents or assigns, including any entity responsible for the management of Crossings or collection of Crossing fees.
42. **“Simple Make Ready”** means any Make Ready that is not a Complex Make Ready.
43. **“Small Wireless Facility”** means a Wireless Facility that meets the following qualifications:
- 43.1. Each Antenna associated with the Facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of Antennas that have exposed elements, each Antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and
- 43.2. All other wireless equipment associated with the Facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and Utility Poles or other support structures.
44. **“Subscriber”** means any person or entity that uses or is authorized to use a Network Service, whether for value or otherwise.

45. **"Substantial Modification"** means a proposed modification of an existing Wireless Support Structure which will substantially change the physical dimensions of the Wireless Support Structure under the objective standard for substantial change adopted by the FCC pursuant to 47 C.F.R. § 1.40001.
46. **"Utility"** means a company, electric cooperative, or other entity that owns and/or operates Facilities used for the generation and transmission or distribution of electricity, gas, water, or communications services to the general public.
47. **"Utility Pole"** means a pole or similar structure that is used, or capable of being used, in whole or in part by a Communications Provider or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless an Authority grants a waiver for such pole. The term does not include structures that support only Wireless Facilities.
48. **"Wireless Facility"** means equipment at a fixed location which enables wireless communications between user equipment and a Communications Network, including: (i) equipment associated with wireless communications, and (ii) radio transceivers, Antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes Small Wireless Facilities. The term does not include the structure or improvements on, under or within which the equipment is located.
49. **"Wireless Infrastructure Provider"** means a person, including a person authorized to provide telecommunications service in the State, who builds or installs wireless communication transmission equipment, Wireless Facilities, or wireless support structures but is not a Wireless Services Provider.
50. **"Wireless Provider"** means a wireless Infrastructure provider and/or a Wireless Services Provider.
51. **"Wireless Services"** means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using Wireless Facilities.
52. **"Wireless Services Provider"** means a person who provides Wireless Services.
53. **"Wireless Support Structure"** means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting Wireless Facilities. The term does not include a Utility Pole.

ARTICLE 3: NETWORK SUPPORT INFRASTRUCTURE REGISTER

1. A centralized Network Support Infrastructure Register containing the data of all available Network Support Infrastructure that is or may be used to facilitate the efficient deployment of Broadband services and that is owned by Network Support Infrastructure Owners shall be created. The principal purpose of the NSIR is to help to accelerate the roll out of such Broadband services.
2. All Network Support Infrastructure Owners shall be required to register with the NSIR within [90] days of the creation of the NSIR and shall, within 30 days of such registration, complete a Network Support Infrastructure Component ("NSIC") form, the format of which shall be determined by the Commission, which shall include, but not be limited to:
 - 2.1. Maps and specifications of network routes, network architecture, Network Support Infrastructure assets including their age, current use of the Network, maintenance access facilities, all in electronic format, and a single point of contact.
 - 2.2. Where such information is not available in electronic format, the Network Support Infrastructure Owner shall provide such information in electronic format within 150 working days of having registered with the Commission or, if so requested by the Commission, render the information into electronic format to the Commission within 40 working days of such a request having been received.
3. The NSIR shall be overseen by the State Broadband Infrastructure Commission whose powers are set out in Article 10. The Commission may appoint local NSIR Centers to facilitate the collection of NSIR data. Every such NSIR Center shall be certified by the Commission which shall determine the optimum number of NSIR Centers in the State and define the area to be served by such. Any entity may apply to the Commission to be certified as the NSIR Center for that area. The Commission shall have authority to grant, amend, or revoke certificates under regulations promulgated relating to certification of the NSIR Center.
4. The NSIR shall also include details of additional Network Support Infrastructure to be created pursuant to the issue of a Minimum Network Specification Notice under Article 7.3. and the Register of Civil Works referred to in Article 7.6.
5. The Commission may, for transparent and non-discriminatory reasons, make exceptions to the requirements of this Article for reasons including, but not limited to, national security, public health and safety, commercially sensitive intellectual property or the insignificance of the scope or value of Network Support Infrastructure concerned. Releasing information to a Communications Provider shall be at the discretion of the Commission, which discretion shall be exercised on a non-discriminatory and transparent basis.
6. In the event that Network Support Infrastructure Owners refuse to provide adequate or any information for the NSIR or fail to respond to or meet any

reasonable request of the Communications Providers made pursuant to Articles 3.5 or 4, the Commission may impose and enforce fines or take such other action as it sees fit in accordance with Article 10.

7. Any dispute between a Network Support Infrastructure Owner and the Commission shall be resolved in accordance with Article 10.

ARTICLE 4: RIGHTS OF ACCESS TO EXISTING NETWORK SUPPORT INFRASTRUCTURE

1. Request for Information

- 1.1. Subject to Article 3.5, Communications Providers shall be entitled to apply to the Commission to access information on the NSIR, on a confidential basis, once they have completed an initial Request for Information form, the format of which shall be determined by the Commission, which request shall specify the relevant components of the Network Support Infrastructure Owner's Network and the purpose the information is required for.

2. Request for Access and Site Surveys

- 2.1. All Network Support Infrastructure Owners shall be entitled to offer Communications Providers access to their Network Support Infrastructure and shall be obliged to grant all reasonable requests from Communications Providers to give access to their Network Support Infrastructure for the purpose of implementing components of Communication Networks.
- 2.2. Requests for access by Communications Providers shall be made using a Request for Access ("RFA") form, the format of which shall be determined by the Commission, but shall include sufficient information to enable the Network Support Infrastructure Owner to arrive at a fully informed decision within 30 working day of receipt of an RFA.
- 2.3. Where the Network Support Infrastructure Owner consents to access, the terms offered must be fair and reasonable including as to time, price and conditions and set forth using a Consent to Access ("CTA") form, the format of which shall be determined by the Commission.
- 2.4. Once a valid RFA has been submitted, the Network Support Infrastructure Owner, shall grant all reasonable requests from the issuer of the RFA to conduct a site survey relating to the components of its Network Support Infrastructure specified in the RFA. Such request shall be made using a Site Survey Request ("SSR") form, the format of which shall be determined by the Commission. The Network Support Infrastructure Owner shall have 15 working days to respond to such request.

2.5. Where the Network Support Infrastructure Owner consents to the site survey, the terms offered shall be fair and reasonable including as to time, price and conditions and made using a Consent to Survey (“CTS”) form, the format of which shall be determined by the Commission.

3. Refusal of Access

3.1. Where the Network Support Infrastructure Owner refuses access, the basis of refusal shall be fair and reasonable and shall be communicated to the entity requesting access within a reasonable time and in any event, no later than 30 working days from the date of receipt of the request, and shall be specified in a Refusal of Access (“ROA”) form, the format of which shall be determined by the Commission but which shall include a number of grounds for refusal including, without limitation, technical suitability, network capacity, national security, public health and safety, commercially sensitive intellectual property and the availability of more suitable alternatives.

4. Dispute Resolution

4.1. Where Network Support Infrastructure Owners do not respond to an RFA or SSR form within 30 working days or where the terms of a CTS, CTA or ROA form are in dispute and where the parties have been unable to reach agreement within 30 working days, Communications Providers may refer the case to the Commission. Cases referred to the Commission shall be dealt with in accordance with Article 10.

4.2. The Commission may, at its discretion, exercise its power to impose and enforce fines in accordance with the terms of Article 10.

ARTICLE 5: SPECIAL PROVISIONS FOR RIGHTS OF ACCESS TO POLES IN THE COMMUNICATIONS SPACE

1. Make Ready Provisions

1.1. Upon approval of an Attachment Application by an Owner, Pre-Existing Third Party Users shall allow an Attacher, using Preapproved Contractors and at the Attacher’s expense, to perform Make Ready by transferring, relocating, rearranging, or altering the Attachments of any Pre-Existing Third Party User to the extent necessary or appropriate to accommodate the Attacher’s Attachment; provided, however:

1.1.1. The Attacher will not perform Complex Make Ready without first providing thirty (30) days’ prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User so that a field meeting can be scheduled within that time frame with technicians from the Pre-Existing Third Party and the Attacher. The technicians will decide what steps need to be taken to complete the Complex Make Ready;

- 1.1.2. Nothing in this Article authorizes an Attacher to perform any act requiring an electric supply outage; and
- 1.1.3. Nothing in this Article authorizes an Attacher to perform any act with respect to Attachments located above the 'Communication Worker Safety Zone', as such term is defined in the then-current National Electrical Safety Code, or any electric supply facilities wherever located.
- 1.1.4. The Attacher will not perform Simple Make Ready without first providing fifteen (15) days' prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User.
- 1.2. In the event a Pre-Existing Third Party User fails to transfer, relocate, rearrange or alter any of its Attachments within thirty (30) days of receiving the written notice required in Article 5.1.1.1., the Attacher, using Pre-Approved Contractors, may undertake Complex Make Ready with respect to such Attachments by transferring, relocating, rearranging, or altering the Attachments at the Attacher's expense; provided, however, that the Pre-Existing Third Party User will have sixty (60) days from the date of notice to perform Complex Make Ready if the technicians mutually agree to such extension in the field meeting required in Article 5.1.1.1.
- 1.3. The Attacher will place its Attachment where instructed by the Owner.
- 1.4. At its own expense, Attacher shall ensure that any Make Ready Attachments that are transferred, relocated, rearranged or altered are done in accordance with all applicable federal, State and local laws and regulations; and all applicable engineering and safety standards.
- 1.5. The Attacher shall immediately notify the Owner and any Pre-Existing Third Party User if the Attacher has any reason to believe that, in the performance of any Make Ready, the Pre-Existing Third Party's equipment or services may have been compromised.
- 1.6. Within thirty (30) days of the Attacher's completion of Make Ready that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner. Upon receipt of the As-Built Reports, the Pre-Existing Third Party User and Owner may conduct a field inspection within sixty (60) days without waiving any rights. The Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and Owner for performing such field inspection.
- 1.7. If a transfer, relocation, rearrangement, or alteration results in an Attachment of a Pre-Existing Third Party User failing to conform with

the applicable Owner's clearance, separation, standards set by the State or locality, or other standards applicable to Utility Poles or structures of the type in question, the Pre-Existing Third Party User or Owner shall notify the Attacher in writing, which includes electronic communication, within the sixty (60) day inspection window without waiving any rights. In the written notice, the Pre-Existing Third Party User will elect to either (i) perform the correction itself or bill the Attacher for the actual, reasonable, and documented expenses of the correction incurred by the Pre-Existing Third Party User, or (ii) instruct the Attacher to perform the correction at the Attacher's expense using a Pre-Approved Contractor. Any post-inspection corrections performed by the Attacher must be completed within thirty (30) days of written notice to the Attacher from the Pre-Existing Third Party User or Owner. Within thirty (30) days of the Attacher's completion of any post-inspection corrections that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the Owner.

1.8. To the extent permitted by applicable law, an Attacher that exercises the right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's Facilities pursuant to this Article shall indemnify, defend and hold harmless the Owner of the affected Utility Pole or similar structure from and against any action, suit, or proceeding by an affected Pre-Existing Third Party User arising from such transfer, relocation, rearrangement or alteration.

1.9. To the extent permitted by applicable law, an Attacher that exercises their right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this Article shall indemnify, defend and hold harmless the Owner against any losses, claims or demands arising out of bodily injury, death or damage to or loss of property that results from the performance of Attacher's Make Ready.

1.9.1 Prior to performing any Make Ready, the Attacher must post a \$1 million surety bond to guarantee the timely and proper performance of Make Ready.

1.10. In the event of any disputes arising out of this Article, the parties may exercise any of their legal rights, including the ability to negotiate a resolution in good faith.

2. Overlashing

2.1 A Pre-Existing Third Party User need not submit an Attachment Application to the Owner if the Pre-Existing Third Party User intend only to Overlash additional communications wires or cables onto or

attach small equipment to communications wires or cables if previously attached to Utility Poles with the Owner's consent under the following circumstances:

2.1.1 A Pre-Existing Third Party User's wires, cables or equipment may not be Overlashed on or attached to another Pre-Existing Third Party User's Attachements without the Owner's consent.

ARTICLE 6: SPECIAL PROVISIONS FOR RAILROAD CROSSINGS

1. Title of Public Rights of Way for Railroad Crossings

Notwithstanding any other provisions, when Railroad operations cross on rights-of-way owned by the State or municipality, the title or interest held by the State or municipality in such rights-of-way shall be retained by the State or municipality for future transportation purposes and such other purposes as are not inconsistent with future transportation purposes; except that such rights-of-way shall not be used by members of the general public without permission of the State or municipality as managed by the [Commission/ Authority]. The State or municipality shall allow abutting farm operations to use the land over which the rights-of-way pass for agricultural purposes. Unless use and occupancy of Railroad rights-of-way adversely affect Railroad safety, Broadband facilities and wireless and other telecommunications facilities that are installed along or within the Railroad right-of-way in compliance with applicable operations and safety standards at the time of installation are consistent with existing and future transportation purposes.

2. Rights of Access to Railroad Crossings

2.1. Application

2.1.1. This Article applies to:

- (1) any Crossing in existence before the effective date of this Model Code if an agreement concerning the Crossing has expired or has been terminated. In such instance, if the collective amount that equals or exceeds the standard Crossing fee under subsection 2.4. has been paid to the Railroad during the existence of the Crossing, no additional fee is required; and
- (2) any Crossing commenced on or after the effective date of this Article.

2.2. Right-of-way Crossing; Application for permission

2.2.1. Any Communications Provider or Network Support Infrastructure Owner that intends to place a Facility across or upon a Railroad right-of-way shall request prior permission from the Railroad.

2.2.2. The request must be in the form of a completed Crossing Application, including an engineering design showing the location of the proposed Crossing and the Railroad's property, tracks, and wires that the Communications Provider or Network Support Infrastructure Owner will cross. The engineering design must conform with guidelines published in the most recent edition of the (1) National Electric Safety Code, or (2) Manual for Railway Engineering of the American Railway Engineering and Maintenance-of-Way Association. The Communications Provider or Network Support Infrastructure Owner must submit the Crossing Application on a form provided or approved by the Railroad, if available.

2.2.3. The Application must be accompanied by the standard Crossing fee specified in subsection 2.4. and evidence of insurance as required in subsection 2.5. The Communications Provider or Network Support Infrastructure Owner must send the Application to the Railroad by certified mail, with return receipt requested.

2.2.4. Within 15 calendar days of receipt of an Application that is not complete, the Railroad must inform the Applicant regarding any additional necessary information and submittals.

2.3. Right-of-way Crossing; construction

Beginning 35 calendar days after the receipt by the Railroad of a completed Crossing Application, Crossing fee, and certificate of insurance, the Communications Provider or Network Support Infrastructure Owner may commence the construction of the Crossing unless the Railroad notifies the Communications Provider or Network Support Infrastructure Owner in writing that the proposed Crossing or paralleling is a serious threat to the safe operations of the Railroad or to the current use of the Railroad right-of-way.

2.4. Standard Crossing fee

2.4.1. Unless otherwise agreed by the parties, a Communications Provider or Network Support Infrastructure Owner that crosses a Railroad right-of-way, other than a Crossing within a public right-of-way, must pay the Railroad a onetime standard Crossing fee of \$500 per Crossing adjusted as provided in Subsection 2.4.5, for each Crossing. Except as otherwise provided in this subdivision, the standard Crossing fee is paid in lieu of any license, permit, Application, processing fee, or any other fee or charge to reimburse the Railroad for direct expenses incurred by the Railroad as a result of the Crossing. No other fee or charge may be assessed to the Communications Provider or Network Support Infrastructure Owner by the Railroad.

2.4.2. In addition to the standard Crossing fee, the Communications Provider or Network Support Infrastructure Owner shall also reimburse the Railroad for any reasonable and necessary flagging expense associated with a Crossing, based on the Railroad traffic at the Crossing.

2.4.3. No Crossing fee is required if the Crossing is located within a public right-of-way.

2.4.4. The placement of a single Conduit and its content is a single Facility. No additional fees are payable based on the individual fibers, wires, lines, or other items contained within the Conduit.

2.4.5. Annually, the standard Crossing fee under Subsection 2.4.1 must be adjusted based on the percentage change in the annual average producer price index for the preceding year compared to the year prior to the preceding year. Each adjustment is effective for Applications submitted on or after July 1. The producer price index is final demand, finished consumer energy goods, as prepared by the Bureau of Labor Statistics of the United States Department of Labor.

2.5. **Certificate of insurance; coverage**

2.5.1. The certificate of insurance or coverage submitted by:

- (1) a municipal Utility or municipality must include commercial general liability insurance or an equivalent form with a limit of at least \$1,000,000 for each occurrence and an aggregate of at least \$2,000,000;
- (2) a Utility providing natural gas service must include commercial general liability insurance with a combined single limit of at least \$5,000,000 for each occurrence and an aggregate limit of at least \$10,000,000; or
- (3) a Communications Provider or Network Support Infrastructure Owner not specified in clauses (1) and (2) must include commercial general liability insurance with a combined single limit of at least \$2,000,000 for each occurrence and an aggregate limit of at least \$6,000,000.
- (4) the Railroad may require protective liability insurance with a combined single limit of \$2,000,000 for each occurrence and \$6,000,000 aggregate. The coverage may be provided by a blanket Railroad protective liability insurance policy if the coverage, including the coverage limits, applies separately to each individual Crossing. The coverage is required only during the period of construction, repair, or replacement of the Facility.

(5) The insurance coverage under Subsections (1) and (2) of 2.5.1. must not contain an exclusion or limitation related to railroads or to activities within 50 feet of Railroad property.

2.5.2. The certificate of insurance must be from an insurer of the communications provider's or network support infrastructure owner's choosing.

2.6. Objection to Crossing; petition to State Regulatory Authority

2.6.1. If a Railroad objects to the proposed Crossing or paralleling due to the proposal being a serious threat to the safe operations of the Railroad or to the current use of the Railroad right-of-way, the Railroad must notify the Communications Provider or Network Support Infrastructure Owner of the objection and the specific basis for the objection. The Railroad shall send the notice of objection to the Communications Provider or Network Support Infrastructure Owner by certified mail, with return receipt requested.

2.6.2. If the parties are unable to resolve the objection, either party may petition the [Commission/ Authority] for assistance via mediation or arbitration of the disputed Crossing Application. The petition must be filed within 60 days of receipt of the objection. Before filing a petition, the parties shall make good faith efforts to resolve the objection.

2.6.3. If a petition is filed, the [Commission/ Authority] must issue an order within 120 days of filing of the petition. The order may be appealed. The [Commission/ Authority] must assess the costs associated with a petition equitably among the parties.

2.7. Additional requirements; objection and petition to [Commission/ Authority]

2.7.1. If a Railroad imposes additional requirements on a Communications Provider or Network Support Infrastructure Owner for crossing its lines, other than the proposed Crossing being a serious threat to the safe operations of the Railroad or to the current use of the Railroad right-of-way, the Communications Provider or Network Support Infrastructure Owner may object to one or more of the requirements. If it objects, the Communications Provider or Network Support Infrastructure Owner shall provide notice of the objection and the specific basis for the objection to the Railroad by certified mail, with return receipt requested.

2.7.2. If the parties are unable to resolve the objection, either party may petition the [Authority/ Commission] for resolution or modification of the additional requirements. The petition must be filed within 60 days of receipt of the objection. Before filing a

petition, the parties shall make good faith efforts to resolve the objection.

2.7.3. If a petition is filed, the [Authority/Commission] shall determine, after notice and opportunity for hearing, whether special circumstances exist that necessitate additional requirements for the placement of the Crossing. The [Authority/Commission] must issue an order within 120 days of filing of the petition. The order may be appealed. The [Authority/Commission] shall assess the costs associated with a petition equitably among the parties.

2.8. Operational relocation

2.8.1. A Railroad may require a Communications Provider or Network Support Infrastructure Owner to relocate a Facility when the Railroad determines that relocation is essential to accommodate Railroad operations, and the relocation is not arbitrary or unreasonable. Before agreeing to the relocation, a Communications Provider or Network Support Infrastructure Owner may require a Railroad to provide a statement and supporting documentation identifying the operational necessity for requesting the relocation. A Communications Provider or Network Support Infrastructure Owner must perform the relocation within a reasonable period of time following the agreement.

2.8.2. (2) Relocation is at the expense of the Communications Provider or Network Support Infrastructure Owner. A standard fee under subsection 2.4. may not be imposed for relocation.

2.9. Existing Agreements

Nothing in this Article prevents a Railroad and Communications Provider or Network Support Infrastructure Owner from continuing under an existing agreement, or from otherwise negotiating the terms and conditions applicable to a Crossing or the resolution of any disputes relating to the Crossing. A Communications Provider or Network Support Infrastructure Owner may elect to undertake a Crossing or paralleling under this Article. Nothing in this Article impairs the authority of a Communications Provider or Network Support Infrastructure Owner to secure crossing rights by easement through exercise of the power of eminent domain.

ARTICLE 7: NEW AND MODIFIED INFRASTRUCTURE TO BE BROADBAND READY

1. Where the creation of new Infrastructure or the modification of existing Infrastructure by or on behalf of any Network Support Infrastructure Owner amounts to Civil Works ("**New Infrastructure**"), the License to create the New Infrastructure shall be conditional upon the incorporation into the New Infrastructure of Network Support Infrastructure, including without limitation, poles, Ducts and Conduits, capable of supporting components of

Communications Networks in accordance with a Minimum Network Specification Notice (“MNSN”) issued by the Commission.

2. Any MNSN issued by the Commission shall be objective, transparent and proportionate and shall contain a minimum of the following information, arrived at in accordance with industry best practices:
 - 2.1. Technical specifications including, without limitation:
 - 2.1.1. Network capacity, which shall be determined by taking into account the projected growth in demand for Communications Networks over a 20-year period, which projection shall be determined by the Commission each year in consultation with industry experts and made publicly available;
 - 2.1.2. The proposed network architecture including, without limitation, network depth, construction and related facilities including inspection chambers, man holes, pull tapes and general access and maintenance facilities.
 - 2.2. Formulas for the basis of compensation for the Network Support Infrastructure Owner for complying with the MNSN including identification of the source of the funding for the MNSN.
 - 2.3. Terms and conditions of access, including information access and transparent, non-discriminatory cost based pricing formulas, for Communications Providers wishing to access the new Network Support Infrastructure created in accordance with the MNSN.
3. The Commission shall add any MNSNs to the NSIR set out in Article 3 and all registered users of the NSIR shall be advised of the MNSN within 10 working days of the issue of any MNSN. Parties interested in financing part or all of the communications capacity created by the MNSN will be invited to apply to the relevant Network Support Infrastructure Owner subject to the terms of Article 2.3 of this Article.
4. The Commission may, for transparent and non-discriminatory reasons, make exceptions to the requirements of this Article for reasons including, but not limited to, national security, public health and safety or the insignificance of the scope, duration or value of the proposed Civil Works.
5. Where the Commission decides that no MNSN shall be issued, it may still, at its discretion, publish the details of the proposed Civil Works on the NSIR and invite interested parties to contact the relevant Network Support Infrastructure Owner with a view to discussing implementing components of Communications Networks.
6. The Commission shall maintain, as part of the NSIR, a Register of Civil Works.
 - 6.1. Civil Works that are to be conducted by or on behalf of Network Support Infrastructure Owners shall be registered with the NSIR at

least 45 working days before the first related License Application is made for such Civil Works. Registrations shall be in electronic format using the Civil Works Registration (“CWR”) form, the format of which shall be determined by the Commission. The CWR shall include at least the same information as is required for License Applications including without limitation:

6.1.1. Location and type of works clearly marked on a map;

6.1.2. Details of the Network Support Infrastructure involved;

6.1.3. Estimated start date and duration of the proposed works; and

6.1.4. A single contact point.

6.2. The Commission shall ensure that all registered users of the NSIR shall be advised of any Civil Works so registered within 10 working days of any such registration.

6.3. Coordination of Civil Works

6.3.1. The License to conduct Civil Works shall be conditional upon a requirement to coordinate Civil Works with other Network Support Infrastructure Owners in accordance with a Civil Works Coordination Notice (“CWCN”) issued by the Commission.

6.3.2. Any such CWCN issued by the Commission shall be objective, transparent and proportionate and shall contain a clear explanation of the grounds for the issue of the notice taking into account industry best practices and the terms of such coordination.

6.3.3. If no such CWCN is issued within 30 working days of Civil Works being registered with the NSIR, Network Support Infrastructure Owners shall, for a further 30 working days, meet any reasonable request to coordinate Civil Works from Network Support Infrastructure Owners on transparent and non-discriminatory terms. Where such terms cannot be agreed upon within 20 working days, the case may be referred to the Commission.

6.4. Prevention of Civil Works

6.4.1. The Commission may, in the absence of being advised of sound reasons based on industry best practice for not doing so, seek to prevent Civil Works by refusing consent to a License where:

(1) In the transparent and non-discriminatory opinion of the Commission, there is already sufficient spare and appropriate Communications Network capacity available to the Applicant as evidenced by the NSIR, or

- (2) The Applicant is seeking to conduct Civil Works involving a public highway or other public place which has been the subject of Civil Works by a Network Support Infrastructure Owner in the previous [six] months and the Applicant was aware of such Civil Works in that it was a matter of record on the NSIR and, as such, had an adequate opportunity to apply to coordinate Civil Works at that time.
7. The Commission may, for transparent and non-discriminatory reasons, make exceptions to the requirements of this Article for reasons including, but not limited to, national security, public health and safety or the insignificance of the scope, duration or value of the proposed Civil Works.
8. Any dispute between a Network Support Infrastructure Owner and the Commission shall be referred to the Commission in accordance with Article 10.

ARTICLE 8: BUILDINGS AND NETWORK ACCESS POINTS TO BE BROADBAND READY

1. Right to Access Network Access Points, Subject to Consent

- 1.1. Communications Providers shall have the right to roll out their Networks, at their own cost, up to Network Access Points (“NAP”), whether within or outside any building or premises, subject to getting any necessary consents to do so from the entity or entities controlling access to the NAP.
- 1.2. Any entity or entities controlling access to a NAP shall meet all reasonable requests for access from Communications Providers on fair and non-discriminatory terms and conditions including price, except where they can demonstrate that a commercially viable NAP alternative exists or that to consent would be contrary to the interests of national security, public health or safety or commercially sensitive intellectual property.
- 1.3. Where such access is not granted within 20 working days, Communications Providers may refer the case to the Commission.

2. Right to Create Network Access Points, Subject to Consent

- 2.1. Where, in order to deliver a Network Service to a Subscriber, Communications Providers require to create a new NAP, Communications Providers shall have the right to create such NAP, at their own cost, whether within or outside any building or premises, subject to getting any necessary consents to do so from the entity or entities controlling access to the proposed location of the new NAP.
- 2.2. Any entity or entities controlling access to such proposed NAP location shall meet all reasonable requests for access from Communications Providers on fair and non-discriminatory terms and conditions

including price, except where they can demonstrate that a commercially viable NAP alternative exists or that to consent would be contrary to the interests of national security, public health or safety or commercially sensitive intellectual property.

2.3. Where such access is not granted within 20 working days, Communications Providers may refer the case to the Commission.

3. Network Access Points, Ducts and Conduits in New or Renovated Buildings

3.1. All multi-tenant buildings constructed after [date], whether publicly or privately funded or whether for commercial, civic, or residential use shall, as a condition of their License to build, be equipped with sufficient NAPs and high-speed network compatible Conduits so as to make the building high-speed network ready; and

3.2. In all such buildings, if built before [date] but renovated after such date and with such renovations amounting to Civil Works, the License to conduct such Civil Works shall be conditional upon the renovated building being equipped with sufficient NAPs and Communications Network compatible Ducts and Conduits so as to make the building Network ready.

3.3. For the purposes of this Article, NAPs, Ducts and Conduits shall, to the extent technically possible and in accordance with best industry practices, be of the same design and specification without discrimination between Communications Providers, shall be suitable for use by and connection to Communications Networks and shall be specified from time to time by the Commission.

3.4. The Commission may, for transparent and non-discriminatory reasons, make exceptions to the requirements of this Article for reasons including, but not limited to, national security, public health and safety, the insignificance of the scope, duration or value of the proposed Civil Works, or for reasons of conservation or preservation of national heritage.

ARTICLE 9: SPECIAL PROVISIONS FOR WIRELESS NETWORKS

1. Deployment of Wireless Facilities and Wireless Support Structures Generally

1.1. Except as provided in this section, an Authority may not prohibit, effectively prohibit, regulate, or charge for the construction or Collocation of Wireless Facilities and Wireless Support Structures, whether through any law, ordinance, regulation or practice. An Authority may not institute, either expressly or de facto, a moratorium on (i) filing, receiving or processing Applications or (ii) issuing permits or other approvals for a Wireless Facility or a Wireless Support Structure.

- 1.2. An Authority may require an Application process in accordance with this subsection, and permit and/or other fees in accordance with subsection 3. An Authority shall accept Applications for permits and shall process and issue permits subject to the following requirements, but may not directly or indirectly require an Applicant to perform services unrelated to the Wireless Facility or Wireless Support Structure for which approval is sought, such as in-kind contributions, including but not limited to reserving fiber, Conduit or pole space for the Authority.
- 1.3. An Applicant may not be required to provide more information to obtain a permit than is necessary to demonstrate the Applicant's compliance with this section, nor may it require an Applicant to provide more information than is necessary to demonstrate the Applicant's compliance with applicable codes for the placement of Wireless Facilities in the locations identified in the application. An Authority may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, Authority liability, or Authority warranties. Such provisions must be reasonable and nondiscriminatory and set forth in writing. An Authority may not limit the placement of Wireless Facilities or Wireless Support Structures by minimum separation distances.
- 1.4. An Applicant's business decision on the type and location of Wireless Facilities, including Wireless Support Structures, Utility Poles, or technology to be used, is presumed to be reasonable. This presumption does not apply with respect to the height of Wireless Facilities, Wireless Support Structures or Utility Poles. An Authority may consider the height of such structures in its zoning review, provided that it may not unreasonably discriminate between the Applicant and other Communications Providers.
- 1.5. An Authority shall not require an Applicant to submit information about, or evaluate, an Applicant's business decisions with respect to (i) the need for the Wireless Support Structure, Utility Pole, or Wireless Facility or (ii) its service, customer demand for service, or quality of service.
- 1.6. Any requirements regarding the appearance of Facilities, including those relating to materials used or arranging, screening, or landscaping must be reasonable.
- 1.7. Any setback or fall zone requirements must be substantially similar to such a requirement that is imposed on other types of commercial structures of a similar height.
- 1.8. Application Timeframes:

1.8.1. Within 30 days after receiving an Application, an Authority must determine and notify the Applicant by electronic mail as to whether the Application is complete. If an Application is deemed incomplete, the Authority must specifically identify the missing information within that same 30-day period. An Application is deemed complete if the Authority fails to provide notification to the Applicant within 30 days.

1.8.2. An Application must be processed on a nondiscriminatory basis. An Authority must approve or deny an Application within 90 calendar days after the date the Authority receives a complete Application for a new Wireless Support Structure, or within 60 days after the date the Authority receives a complete Application for a Substantial Modification of a Wireless Support Structure or an Application for a Wireless Facility that is not a Small Wireless Facility. A complete Application is deemed approved if an Authority fails to approve or deny the Application within 60 days or 90 days, as applicable, after receipt of the Application. If an Authority has review procedures beyond review and action on an Application, those procedures must also be completed within 60 days or 90 days, as applicable. Construction or Collocation pursuant to a permit issued pursuant to an approved or deemed approved Application shall commence within two years of such approval, which period may be extended by the Authority, and shall be pursued to completion. Any time limitation placed on permits shall be void unless the Applicant subsequently and voluntarily requests that the permit be terminated.

1.8.3. An Authority must notify the Applicant of approval or denial by electronic mail. If the Application is denied, the Authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the Applicant by electronic mail on the day the Authority denies the Application. The timeline for sending such documentation may be extended for up to five business days as necessary and as requested by the Authority. In response to a denial, an Applicant may cure the deficiencies identified by the Authority and resubmit the Application within 30 days after notice of the denial is sent to the Applicant without paying an additional Application fee. The Authority shall approve or deny the resubmitted Application within 30 days after receipt or the Application is deemed approved. Any subsequent review of the resubmitted Application shall be limited to the deficiencies cited in the denial.

1.9. A Wireless Support Structure granted a permit and installed pursuant to this subsection shall comply with federal regulations pertaining to airport airspace protections.

- 1.10. An Authority shall not require a Wireless Provider to indemnify and hold the Authority and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses or fees, except when a court of competent jurisdiction has found that the negligence of the Wireless Provider while installing, repairing or maintaining caused the harm that created such claims, lawsuits, judgments, costs, liens, losses, expenses, or fees, or to require a Wireless Provider to obtain insurance naming the Authority or its officers and employees an additional insured against any of the foregoing.
- 1.11. The Authority, in the exercise of its administration and regulation related to the management of the right-of-way must be competitively neutral with regard to other users of the right-of-way, including that terms may not be unreasonable or discriminatory and may not violate any applicable law.

2. Additional Procedures for Deployment of Small Wireless Facilities

- 2.1. The siting, mounting, placement, construction, modification and operation of a Small Wireless Facility is a permitted use by right in any zone and not subject to zoning review or approval.
- 2.2. A Wireless Provider has the right to locate or Collocate Small Wireless Facilities on an Authority Pole, and/or other Authority-owned poles and other property in the rights-of-way, except that such facilities or networks shall not be located or mounted on any apparatus, pole or signal with tolling collection or enforcement equipment attached. In addition, an Authority may deny a proposed Collocation of a Small Wireless Facility in the public rights-of-way if the proposed Collocation:
 - 2.2.1. Materially interferes with the safe operation of traffic control equipment;
 - 2.2.2. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
 - 2.2.3. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or State standards regarding pedestrian access or movement; and/or
 - 2.2.4. Materially fails to comply with applicable State authority.
- 2.3. An Authority may not require the placement of Small Wireless Facilities on any specific Utility Pole or category of poles or require multiple Antenna systems on a single Utility Pole. An Authority may not enter into an exclusive arrangement with any person for the right to attach equipment to Authority Poles.
- 2.4. Notwithstanding the general prohibition on separation distances in this Article, within 14 days after the date of filing the Application for

the construction, placement, or use of a Small Wireless Facility and the associated Wireless Support Structure at a location where a Wireless Support Structure or Utility Pole does not exist, an Authority may propose, as an alternative location for the proposed Small Wireless Facility, that the Small Wireless Facility be Collocated on an existing Utility Pole or on an existing Wireless Support Structure, if the existing Utility Pole or the existing Wireless Support Structure is located within 50 feet of the location proposed in the Application. The Applicant shall use the alternative location proposed by the Authority if: (A) the Applicant's right to use the alternative location is subject to reasonable terms and conditions; and (B) the alternative location will not result in technical limitations or additional costs, as determined by the Applicant. The Applicant must notify the Authority within 30 days of the date of the request whether the Applicant will use the alternative location. If the Applicant notifies the Authority that it will use the alternative location, the Application shall be deemed granted for that alternative location and all other locations in the Application. If the Applicant will not use the alternative location, the Authority must grant or deny the original Application within 60 days after the date the Application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

- 2.5. An Authority shall permit the Collocation of a Small Wireless Facility which extends no more than 10 feet above the Utility Pole or structure upon which the Facility is to be collocated. An Authority shall permit the installation of a new pole or support structure to hold facilities that is no taller than 10 feet above the tallest existing Utility Pole as of the effective date of this Act, located in the same right-of-way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no Utility Pole within 500 feet, the Authority shall permit without restriction the installation of a pole that is no taller than 50 feet. An Authority may approve Small Wireless Facilities or new poles that do not meet the height limits of this section subject to reasonable restrictions.

2.6. **Application fees**

- 2.6.1. The filing fee for an Application is determined by the following schedule:

Estimated Construction Cost	Fee
Up to \$5,000,000	0.05% or \$1,250.00, whichever is greater

Above \$5,000,000

0.1% or \$25,250.00, whichever is less

2.6.2. All Application fees shall be paid to the Authority at the time an Application is filed with the Authority. Additional assessments may be made for expenses in excess of the filing fee, or fees in excess of the Authority's actual costs will be refunded to the Applicant.

2.6.3. Applicable Codes

- (1) Local code provisions or regulations that concern any of the following:
 - (a) Public safety.
 - (b) Objective design standards and reasonable stealth and concealment requirements.

2.7. An Applicant seeking to construct or collocate Small Wireless Facilities within the jurisdiction of a single Authority may, at the Applicant's discretion, file a consolidated Application and receive a single permit for the Collocation of up to 25 Small Wireless Facilities. If the Application includes multiple Small Wireless Facilities, an Authority may separately address Small Wireless Facility Collocations for which incomplete information has been received or which are denied.

2.8. Collocation of a Small Wireless Facility on an Authority Pole does not provide the basis for the imposition of an ad valorem tax on the pole.

2.9. An Authority may reserve space on Authority Poles for future public safety uses. However, a reservation of space may not preclude Collocation of a Small Wireless Facility. If replacement of the pole is necessary to accommodate the Collocation of the Facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use.

2.10. An Authority may require an Application under this section for the installation of new, replacement or modified Utility Poles associated with the Collocation of Small Wireless Facilities. An Authority shall approve an Application unless the Authority finds that the Utility Pole fails to comply with local code provisions or regulations that concern any of the following:

2.10.1. public safety;

2.10.2. objective design standards and reasonable stealth and concealment requirements that are consistent and set forth in

writing, provided that such design standards may be waived by the Authority upon a showing that the design standards are not reasonably compatible for the particular location of a Small Wireless Facility or that the design standards impose an excessive expense.

- 2.11. Application requirements, processes, timeframes and remedies for Small Wireless Facilities. All requirements, procedures, timeframes and remedies set forth in Article 9.1 shall apply to Applications for Small Wireless Facilities, except that the period within which an Authority must approve or deny an Application is 60 days for all Small Wireless Facilities. A complete Application is deemed approved if an Authority fails to approve or deny the Application within 60 days after receipt of the Application.

3. Wireless Siting Fees

- 3.1. General requirements for fees. An Authority may charge an Application fee only if such fee is required for similar types of commercial development within the Authority's jurisdiction. Any Application fee or other fee an Authority may charge for reviewing and acting on Applications and issuing permits for Wireless Facilities or Wireless Support Structures shall be based solely on the actual, direct and reasonable costs to process and review such Applications and managing the right-of-way. Such fees shall be reasonably related in time to the incurring of such costs. Any such fees shall also be nondiscriminatory, shall be competitively neutral, and shall be publicly disclosed. Fees paid by an Authority for (i) travel expenses incurred by a third-party in its review of an Application, (ii) direct payment or reimbursement of third-party rates or fees charged on a contingency basis or a result-based arrangement, or (iii) fees paid to the Commission, shall not be included in the Authority's actual, direct and reasonable costs. An Applicant shall not be required to pay higher Application or other fees than the amount charged to a Communications Provider that is not a Wireless Provider. In any dispute concerning the appropriateness of a fee, the Authority has the burden of proving that the fee meets the requirements of this subsection.
- 3.2. Application fees, where permitted, for Applications processed pursuant to Article 9.1 shall not exceed the lesser of the amount charged by the Authority for: (i) a building permit for any similar commercial construction, activity, or land use development; or (ii) \$1,000.
- 3.3. No rate or fee may: (i) result in a double recovery where existing rates, fees or taxes already recover the direct and actual costs of reviewing Applications, issuing Permits, and managing the rights of way; (ii) be in the form of a franchise or other fee based on revenue or customer counts; (iii) be unreasonable or discriminatory; or (iv) violate any

applicable law. Notwithstanding the foregoing, in recognition of the public benefits of the deployment of Wireless Services, an Authority is permitted, on a nondiscriminatory basis, to refrain from charging any rate or fee to a Wireless Provider for the use of the rights of way.

- 3.4. Fees for Small Wireless Facilities. Application fees, where permitted, for Applications processed pursuant to Article 9.2 shall not exceed the lesser of (i) the actual, direct, and reasonable costs to process and review Applications for such facilities; (ii) the amount charged by the city for permitting of any similar activity; or (iii) \$100.00 per Facility for the first five facilities addressed in an Application, plus \$50.00 for each additional Facility addressed in the Application.
- 3.5. Authority Poles. Any annual or other recurring fee an Authority may charge for attaching a Wireless Facility on an Authority Pole shall not exceed the rate computed pursuant to rules adopted by FCC rules for telecommunications pole Attachments if the rate were regulated by the FCC or \$20 per year per Authority Pole, whichever is less.
- 3.6. An Authority may not require any Application or approval, or assess fees or other charges for:
 - 3.6.1. routine maintenance;
 - 3.6.2. replacement of existing Wireless Facilities with Wireless Facilities that are substantially similar or of the same or smaller size; or
 - 3.6.3. installation, placement, maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing Utility Poles in compliance with Applicable Codes by or for a Communications Provider authorized to occupy the rights-of-way. Notwithstanding this paragraph, an Authority may require a right-of-way permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane.

4. Transition Period

- 4.1. Agreements between authorities and Wireless Providers that are in effect on the effective date of this Act remain in effect, subject to applicable termination provisions. The Wireless Provider may accept the rates, fees, and terms established under this subsection that are the subject of an Application submitted after the rates, fees, and terms become effective.
- 4.2. An Authority and Persons owning or controlling Authority Poles and Utility Poles shall offer rates, fees, and other terms that comply with this section no later than three months after the enactment of this Act. No later than that date, an Authority shall also rescind or otherwise terminate any ordinances, regulations or procedures that prohibit or have the effect of prohibiting the construction or installation of Wireless Facilities or Wireless Support Structures.

5. Make-ready Process for Authority Utility Poles

- 5.1. For an Authority Pole that supports an aerial Facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested Collocation must include pole replacement if necessary.
- 5.2. For an Authority Pole that does not support an aerial Facility used to provide communications services or electric service, the Authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested Collocation, including necessary pole replacement, within 60 days after receipt of a complete Application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the Applicant. Alternatively, an Authority may require the Applicant seeking to Collocate a Small Wireless Facility to provide a make-ready estimate at the Applicant's expense for the work necessary to support the Small Wireless Facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a Utility Pole that is substantially similar in color and composition. The Authority may not condition or restrict the manner in which the Applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered Utility Pole shall remain the property of the Authority.
- 5.3. An Authority may not require more make-ready work than is required to meet Applicable Codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to Communications Providers other than Wireless Providers for similar work and may not include any consultant fee or expense.

6. Historic Preservation

This subsection does not limit a local government's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for Facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such laws. An Authority may enforce local codes, administrative rules, or regulations adopted by ordinance in effect on April 1, 2017, which are applicable to a historic area designated by the state or Authority. An Authority may enforce pending local ordinances, administrative rules, or

regulations applicable to a historic area designated by the state if the intent to adopt such changes has been publicly declared on or before April 1, 2017. An Authority may waive any ordinances or other requirements that are subject to this paragraph.

7. Privately-owned Structures

This subsection does not authorize a person to Collocate or attach Wireless Facilities, including any Antenna, Micro Wireless Facility, or Small Wireless Facility, on a privately owned Utility Pole, a privately owned Wireless Support Structure, or other private property without the consent of the property owner.

8. Local Authority

Subject to the provisions of this Act and applicable federal Law, an Authority may continue to exercise zoning, land use, planning and permitting authority within its territorial boundaries, including with respect to Wireless Support Structures and Utility Poles; except that no Authority shall have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any Small Wireless Facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not otherwise owned or controlled by the Authority, other than to comply with Applicable Codes. Nothing in this Act authorizes the state or any political subdivision, including an Authority, to require Wireless Facility deployment or to regulate Wireless Services.

9. Dispute Resolution

The [name (i) state regulatory body with authority over utilities, (ii) binding arbitration, or (iii) court of competent jurisdiction, to be determined on state-by-state basis] shall have jurisdiction to determine all disputes arising under this Act. Unless agreed otherwise and pending resolution of a right-of-way access rate dispute, the Authority controlling access to and use of the right-of-way shall allow the placement of a Wireless Facility or Wireless Support Structure at a temporary rate of one-half of Authority-proposed annual rates or \$20, whichever is less, with rates to be trued up upon final resolution of the dispute. Pending resolution of a dispute concerning rates for Collocation of Small Wireless Facilities on Authority Poles or Utility Poles, the Person owning or controlling the pole shall allow the collocating Person to Collocate on its poles at annual rates of no more than \$20 per year per Authority Pole, with rates to be trued up upon final resolution of the dispute. Complaints shall be resolved no later than 180 days after a complaint or petition is filed.

ARTICLE 10: STATE BROADBAND INFRASTRUCTURE COMMISSION

1. The principal purpose of the Commission is to implement and manage the State Model Code for Accelerating Broadband Deployment and Investment with a view to promoting an increase in the availability of affordable Broadband internet facilities including by reducing the time, cost and environmental impact of rolling-out Communications Networks.

2. Except as to Articles 5, 6 and 9 of the Code, The Commission shall promote and enforce the provisions of the Code and may promulgate any rules or regulations necessary to implement the Commission's authority to enforce this Code.
3. The Commission shall establish an Advisory Committee of persons with expertise in the operation of the Code selected from Commission staff, Network Support Infrastructure Owners; Communications Providers, industry bodies, professional advisers and such other persons as the Commission shall, in its discretion, deem appropriate. The Advisory Committee shall perform duties assigned by the Commission, including establishing industry best practice, advising on matters of Law compliance and advising on fees and fines and may make recommendations to the Commission accordingly. The members of the Advisory Committee shall, in the absence of willful misconduct, be immune individually and jointly, from civil liability for any act or omission done or made in performance of their duties while serving as members of such Advisory Committee.
4. The Commission may levy such fees as it deems appropriate including for subscriptions, Applications and receipt of information. Such fees shall be transparent, proportionate, limited to the Commission's direct costs incurred in performing these functions, and non-discriminatory and shall, where appropriate, shall be published on the Commission web site.
5. The Commission may impose civil penalties for non-compliance with the Code and shall draft and publish a code of procedure for reviewing, related hearings and imposing such civil penalties. The civil penalties and related procedures shall be transparent, proportionate and non-discriminatory and shall, where appropriate, be published on the Commission web site.
6. The Commission shall, in conjunction with the relevant State authorities, decide how the funding of the costs incurred in implementing and managing the Code (including the Commission, the Advisory Committee, the NSIR and related NSIR Centers) shall be managed. In so deciding the Commission shall take account of any fees received pursuant to Article 10.4 and any civil penalties collected pursuant to Article 10.5.
7. The Commission shall agree with the relevant State authorities, who shall have jurisdiction to determine disputes arising under the Code. In reviewing this, the Commission shall have regard to the importance of establishing fast, efficient and cost effective procedures for dispute resolution so as to help promote the Commission's principal purpose as set out in Article 10.1.
8. In the event that the relevant State authorities confer jurisdiction on the Commission to settle certain classes of disputes by way of binding arbitration, the Commission shall resolve matters referred to it for arbitration as soon as practicable and in any event within 50 working days from the receipt by the Commission of any such referral. The decisions of the Commission shall be based on objective, transparent and proportionate criteria taking into account the advice of the Advisory Committee and industry best practices and shall be

legally binding. Without prejudice to a general right of appeal to a court of competent jurisdiction on a point of law, the Commission may, in exceptional cases and at its discretion, refer cases to a court of competent jurisdiction for resolution.

9. The Commission may at its discretion, also offer parties in disputes concerning less material matters, informal but binding mediation facilities.

Vote Item

Section 3: Rural Deployment

Rural Deployment of Broadband

The below principles guided our deliberations on the best way to achieve rural broadband deployment.

Rural America faces a fundamentally different set of challenges than the rest of the country in accessing broadband service because it is harder to make a strong business case for offering rural services, making providing broadband financially unattractive to many providers.

Even with state-wide legislative barrier removal and process standardization, Rural America will remain the least economically-attractive place to build robust and affordable networks and therefore will remain the last to be served, if served at all.

The longer this situation persists, the deeper the economic hole and the more likely that the economic damage cannot be repaired. Therefore, because of the urgency of

both import and time in Rural America, a distinct set of policies and incentives is both justified and necessary for Rural communities alone.

Several such measures are included in the State Model Code provisions prepared by the State Model Code Working Group, but these state provisions will likely prove insufficient for Rural broadband development. Therefore, in addition to the recommendations contained in the draft Model Code, the Rural sub-group also believes the following, limited-duration economic incentives are necessary:

- * Immediate Federal and State tax deductibility of all capital directly expended for building Broadband networks in Rural areas (as those terms are defined in the Model Code) for the first five years after the Code is adopted.

- * Incremental funding for E-Rate, E-Health, FirstNet and other successful Federal Programs that form broadband "beachheads" in Rural areas.

- * Broadening of the base of fee-paying private-industry entities beyond current "Providers" to include commercial entities who place heavy strain on and significantly benefit from broadband infrastructure investment (no additional funding should derive from any further taxes or fees imposed on current Providers or their Customers and subsidization of copper-wire voice service should be gradually reduced, with such support shifted to Rural broadband deployment).

- * Disproportional, limited-duration Federal Infrastructure funding committed to Rural Broadband Network construction, with block grants sent to and administered by State USF agencies or, in the absence of such agencies, new state agencies developed for this purpose.

1. Definitions.

- (a) "Accessory equipment" means any equipment serving or being used in conjunction with a wireless facility or wireless support structure including, but not limited, to, utility or transmissions equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.
- (b) "Affordable" means offering broadband service in rural areas at rates that are reasonably comparable to urban areas.
- (c) "Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless services.
- (d) "Application" means a request submitted by an applicant to an authority for
 - i. the construction of a new wireless support structure or new wireless facility;
 - ii. the substantial modifications of a wireless support structure or wireless facility; or
 - iii. collocation of a wireless facility or replacement of a wireless facility.
- (e) "Available" or "availability" means broadband services are available for purchase by at least 90% of the residents and businesses of a particular area.
- (f) "Broadband Service" means a fixed or mobile technology capable of delivering Broadband.
- (g) "Broadband" means any service used to provide Internet access that meets the following requirements:
 - i. Speeds of at least 25 megabits downstream and 3 megabits upstream, increased as needed to meet changing demand and needs, and at a minimum to meet the definition of Advanced Communication Services as that term is defined by the Federal Communication Commissions.

- ii. Latency that does not exceed 100 milliseconds round trip.
- iii. Minimum usage allowance of 150 gigabytes (GB) per month.

- (h) "Collocate" or "collocation" means the mounting or installation of wireless facilities on a building, structure, wireless support structure, tower, utility pole, base station or existing structure for the purposes of transmitting or receiving radio frequency signals for communication purposes.
- (i) "Conduit" means innerduct or microduct for fiber optic or Ethernet cables that support broadband and wireless facilities for broadband service.
- (j) "Consistency of Service" means service that meets a 90/90 rule, that is, the speed and latency experienced by least 90% of the subscribers at least 90% of the time over peak periods.
- (k) "Cost-plus Basis" means the pro-rated cost to install the infrastructure and any relevant supporting equipment.
- (l) "Dark Fiber" means Fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.
- (m) "FCC" means The Federal Communications Commission (FCC), which is an independent agency of the United States government created by statute 47 U.S.C. § 151 and 47 U.S.C § 154.
- (n) "Fiber" and "Fiber Optic Technology" mean a technology that converts electrical signals carrying data to light and sends the light through transparent glass fibers to provide broadband internet services.
- (o) "Fixed broadband Service" means broadband services provided by terrestrial-based non-mobile services such as T1, Cable, DSL, FIOS, Fiber, and Fixed Wireless. The term excludes the cellular data market (see the definition for Mobile Broadband") and satellite.

- (p) "Franchise" means the grant of authority to any person to engage in business as a public utility, whether or not exclusive or shared with others or restricted as to terms and conditions and where described by area or territory or not, and includes certificates, and all other forms of licenses or orders and decisions granting such authority.
- (q) "Latency" means the delay before a transfer of data begins following an instruction for its transfer.
- (r) "Local Governing Authority" refers to the local, municipal, state, or county government responsible for making decisions or passing laws for a certain area.
- (s) "Local Government" means any city, county, rural district, or township located within the state.
- (t) "Mobile Broadband Service" means broadband provided over a cellular or mobile network.
- (u) "Public right-of-way" means only the area of real property in which the State or Local Government has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- (v) "Rural" means a county with an average population density of less than 100 persons per square mile, excluding the county seat.
- (w) "Small Cell" means operator-controlled, low-powered radio access nodes, including those that operate in licensed spectrum and unlicensed carrier-grade Wi-Fi.

- (x) "Telecommunications Service" means the provision of voice, video, and/or data to retail customers by companies with physical connections to the customer's home, business, or portable device or who provides voice, video, and/or data services through a company with physical connections to the customer's home, business, or portable device.
- (y) "Tower" means a Vertical Asset where antennae and electronic communications equipment are placed.
- (z) "Trenching" means a construction project in which a highway right-of-way surface is opened or reviewed for the purpose of laying or installing conduit, fiber, or similar infrastructure in excess of one mile in length. Trenching does not mean any other activity or project for the construction or maintenance, including drainage or culvert work, of a highway facility.
- (aa) "Unserved" and/or "Underserved" means an area that is either: (A) Not served by any broadband service provider; or (B) served by a Broadband Service provider but less than 10% of the persons in such area have access to Broadband Service.
- (bb) "Utility" means a company, electric cooperative, or other entity that owns and/or operates facilities used for generation and transmission or distribution of electricity, gas, water, or telecommunications services to general public.
- (cc) "Utility Pole" means a structure owned or operated by a public utility, municipality, or an electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telecommunications, cable, electricity, or to provide lighting.
- (dd) "Vertical Asset" means any pole, cellular tower, building, water tower, granary, or other structure capable of being used to deploy antennas or other equipment for telecommunications or broadband services.
- (ee) "Wireless Facility" means equipment at a fixed location that enables wireless communications between user equipment and a communication network, including but not limited to:

- i. Equipment associated with wireless services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and
 - ii. radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration. Wireless facility does not mean any wired connections from a wireless support structure or base station to a hub or switching location.
- (ff) "Wireline Facility" means equipment at a fixed location that enables fixed broadband or telecommunications services between user equipment and a communication network. Wireline Facility does not mean any wireless equipment or wireless support structures.

2. State [Broadband Manager] [Broadband Council]

- (a) The state hereby [designates the Director of [name agency] as the State Broadband Manager] [creates the position of State Broadband Manager as a cabinet-level advisory position].
- (b) The State Broadband Manager shall coordinate the state's efforts to expand and improve broadband capacity and availability by:
 - i. Serving as a single point of contact for:
 - 1. State agencies, boards, commissions, and constitutional officers, including without limitation the Governor, Department of Education, Department of Higher Education, and State Highway and Transportation Department;
 - 2. Private businesses, enterprises, and broadband providers;
 - 3. Nonprofit organizations;
 - 4. Governmental entities and organizations organized under federal law or the law of another state; and
 - 5. Individuals and entities that seek to assist the state's efforts to improve economic development, elementary education, and secondary education through the use of broadband technology;
 - ii. Gathering, compiling, and maintaining information obtained independently or from an individual or entity described in subdivision (b)(1) of this section;
 - iii. Formulating, updating, and maintaining a state broadband plan; and

iv. On or before January 1 and July 1 of each year, filing a written report of the activities and operations of the State Broadband Manager for the preceding six (6) months with the:

1. Governor;
2. Legislative Council; and
3. [Name any state committees that should receive a copy of the written report.]

(c) Broadband Council; purpose; membership; compensation; chairman

i. The Broadband Advisory Council (the Council) is established as an advisory council, within the meaning of [cite appropriate code section], in the executive branch of state government. The purpose of the Council shall be to advise the Governor on policy and funding priorities to expedite deployment and reduce the cost of broadband access in the State.

ii. The Council shall have a total membership of nine members that shall consist of two legislative members, five non-legislative citizen members, and two ex officio members. Members shall be appointed as follows:

1. the Speaker of the House or his/her delegate;
2. the President Pro Tempore of the Senate or his/her delegate;
3. four citizen representatives to be appointed by the Governor, provided that at least one representative must come from agriculture or other organization that represents rural areas of the state; and
4. one citizen representative as selected by the [State] Municipal League;

The [Director/Secretary] of the [State Economic Development office] and the [Director/Secretary] of the [State office of Information Services] shall serve ex officio. Legislative members shall serve terms coincident with their terms of office. Other members shall be appointed for terms of two years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.

iii. All members shall serve without compensation. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided [cite appropriate state statute]. Funding for the costs of expenses of the non-legislative citizen members and all other expenses of the

Council shall be provided by the [the Office of Economic Development or the Office of Information Services].

- iv. The Council shall elect a chairman and a vice chairman annually from among its membership. A majority of the members shall constitute a quorum. The Council shall meet at such times as may be called by the chairman or a majority of the Council.
- v. Staff to the Council shall be provided by the [appropriate state office].

(d) Powers and Duties of the Council

The Council shall have the power and duty to:

- i. Identify opportunities and recommend actions to use the economic development engine offered by the state to improve broadband infrastructure deployment;
- ii. Identify barriers, including taxation or regulatory, to the deployment of broadband to unserved and underserved residences and businesses in the state;
- iii. Make recommendation as to policy, legislative actions, and funding to promote the deployment of broadband infrastructure to unserved and underserved residences and business in the state;
- iv. Provide an annual report to the Governor and the General Assembly regarding progress and barriers to closing the digital divide between served an unserved/underserved areas of the state with recommendations for closing that divide; and
- v. Provide interim reports as requested by the Governor and/or the General Assembly.

3. Public Rights-of-Way

(a) Authority to operate in the public rights-of-way

- i. Any broadband provider shall have the right pursuant to this act to construct, maintain and operate poles, conduit, cable, switches and related appurtenances and facilities along, across, upon, and under any public right-of-way in this state. Such appurtenances and facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.
- ii. Nothing in this act shall be interpreted as granting a broadband provider the authority to construct, maintain or operate any

facility or related appurtenance on property owned by a State or Local Government outside of the public right-of-way.

- iii. The authority of a provider to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety, and welfare requirements and regulations of the State or Local Government. A State or Local Government may exercise its home rule powers in its administration and regulation related to the management of the public right-of-way provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory.
- iv. The State or Local Government shall have the authority to prohibit the use or occupation of a specific portion of public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety, and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include the following:
 1. The prohibition is based upon a recommendation of the State or Local Government engineer, is related to public health, safety and welfare and is nondiscriminatory among providers, including incumbent providers;
 2. the provider has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the State or Local Government for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality;
 3. the State or Local Government reasonably determines, after affording the provider reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or
 4. the specific portion of the public right-of-way for which the provider seeks use and occupancy is environmentally sensitive as defined by state or federal law or lies within a previously designated historic district as defined by local, state or federal law.
 5. Pre-existing presence of another utility in the public right-of-way is *per se* evidence of an absence of a

reasonable basis for excluding other utility providers' access to the same public right-of-way.

(b) A provider's request to use or occupy a specific portion of the public right-of-way shall not be denied without reasonable notice and an opportunity for a public hearing before the State or Local Government governing body. A State or Local Government governing body's denial of a provider's request to use or occupy a specific portion of the public right-of-way may be appealed to a district court.

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

i. Jurisdiction, Authority, and Control

1. Management, Regulation, and Administration by Municipal Corporations

ii. Consolidated Requests

1. Applicants may consolidate requests where the requests are sufficiently similar in nature and scope.

2. Where requests are dissimilar either in nature or in scope, where other considerations, such as historical significance, are present, or where the burden on the municipality would be too great should the requests be consolidated, each request must be considered individually.

iii. Restrictions on Municipal Authority

In the regulation of the placement or construction of any new broadband facility or broadband support structure, a local governing authority shall not:

1. Condition the approval of any application for a new broadband support structure on a requirement that a modification or collocation to such structure be subject to a review that is inconsistent with the requirements of [cite appropriate state statute];

2. Require the removal of existing broadband support structures or broadband facilities as a condition to approval of an application for a new broadband facility or broadband support structure unless such existing broadband support structure or broadband facility is abandoned and owned by the applicant; or

3. Require the applicant to place an antenna or other broadband communications equipment on publicly owned land or on a publicly or privately owned water tank, building, or electric transmission tower as an alternative to the location proposed by the applicant.

iv. Moratorium Prohibited

1. No governing authority shall issue a moratorium on the deployment of broadband facilities in the public right-of-way unless:
 - a. There is imminent potential harm to the public welfare in the absence of a moratorium; or
 - b. Federal or state regulations require surveys or studies, such as environmental or historic survey studies, that will require an extension of the time for approval of an application.
2. No moratorium may last longer than 90 days.

v. Failure to Deem Application Complete within time period

1. Within 14 days after receiving an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the authority must specifically identify the missing information. An application is deemed complete if the authority fails to provide notification to the applicant within 14 days.
2. An application must be processed on a nondiscriminatory basis. A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application. The parties may mutually agree to extend the 60-day application review period. If extended, the authority shall grant or deny the application at the end of the extended period. A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the authority.
3. An authority must notify the applicant of approval or denial by electronic mail. An authority shall approve a complete application unless it does not meet the authority's applicable codes. If the application is denied, the authority must specify in writing the basis for denial,

including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days after notice of the denial is sent to the applicant. The authority shall approve or deny the revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

4. An applicant seeking to collocate small broadband facilities within the jurisdiction of a single authority may, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of up to 30 small broadband facilities. If the application includes multiple small broadband facilities, an authority may separately address small broadband facility collocations for which incomplete information has been received or which are denied.

vi. Exclusive Agreements Prohibited. No agreement pursuant to this section shall provide any applicant with an exclusive right to access the Rights of Way or other infrastructure.

vii. Exemption from Zoning Review. Applications under this provision are exempt from zoning review.

viii. Fees.

A local governing authority shall not:

1. Charge an applicant a zoning, permitting, or other fee for review or inspection of a new or existing broadband facility or broadband support structure [in an amount greater than the amount authorized by subsection [insert appropriate state code provision]];
2. Charge an applicant a zoning, permitting, or other fee for review or inspection of a collocation or modification in excess of \$500.00;
3. Seek reimbursement from the applicant for any application fees, consultation fees, registry fees, or audit fees with respect to a facility or support structure that are based on a contingency fee arrangement; or

4. Charge a broadband service provider or broadband infrastructure provider any rental, license, or other fees in excess of the cost for rental or use of similarly situated property to renew or extend the term of a lease or other agreement for a broadband facility or broadband support structure on such local governing authority's property.

4. Franchise Agreements

- (a) State Preemption of local franchising authority. [It is the recommendation of the rural subcommittee that, at a minimum for rural deployments, local franchising authority be preempted by the State and that local franchising standards be replaced with uniform state franchise standards. We encourage state-wide preemption of franchise rate determination and encourage that these rates be done at cost-based rates administered by a state authority with sufficient local municipal representation to protect the reasonable interests of the locality.]
- (b) Municipalities that seek to exercise limits on siting because of environmentally sensitive, historically significant, culturally sensitive, or otherwise unique or valuable area of the community shall use a "reasonable and necessary" standard to promote a shift of location for the proposed infrastructure.
- (c) Any other approvals, requirements, conditions, limitations, or similar authority over deployment of a Broadband Network or other Broadband facilities not preempted by the State must meet a "reasonable and necessary" standard.
- (d) Disputes between a Rural municipality and a current or proposed Broadband Provider regarding approvals, requirements, conditions, limitations, siting, reasonable fees for processing applications, and/or similar issues shall be mediated by the [State PUC or Attorney General or State Broadband Administrator or other appropriate agency], with the written determination being binding on all similar disputes between other municipalities and broadband providers.

5. Rural Broadband Deployment Assistance Fund

- (a) Every provider of intra-state telecommunications services shall annually report their net intrastate telecommunications revenues to the state universal service administrator. The state universal service administrator shall determine the appropriate state universal service assessment rate for the subsequent year based on total revenues reported in the previous year.

(b) The fee level on current providers shall not be increased above 2017 assessments and may be reduced if telecommunications service is defined in state or federal statute as the provision of voice, video, and/or data services through a company with physical connections to the customer's home, business, or portable device.

(c) State Universal Service Fund

- i. Competitive ETCs are ineligible for grants from the state universal service fund to support traditional telephone service after January 1, 2019, unless the state Public Utility Commission or Legislature establish an alternative date
- ii. Eligible telecommunications providers receiving state universal service funds for calendar year 2019 are capped at 90% of the amount received in 2017; for calendar year 2020 incumbent carriers receiving state universal service funds are capped at 85% of the amount received in 2017; in calendar year 2021 capped at 80%; and for calendar year 2022 and beyond, capped at 75%.
- iii. Total funds in the state universal service fund shall not be reduced below the amount of money collected in calendar year 2017.
- iv. Monies in excess of the annual capped amount provided to incumbent telecommunications carriers (as established in B above) shall be designated and deposited in the Rural Broadband Deployment & Maintenance Fund.

(d) Rural Broadband Deployment & Maintenance Fund

- i. Eligible telecommunications carriers as recognized by the state's public utility commission may submit applications to the state universal service administrator or the public utility commission for state assistance to deploy broadband to unserved and underserved customers
- ii. Applications for state assistance shall clearly state:
 1. the geographic area and number of customers to be served,
 2. The length of time necessary to construct the necessary infrastructure to serve the prospective customers,
 3. Proposed efforts to sign to service contracts by customers within the designated geographic area - this may include preconstruction petitions, deposits, or other forms of customer commitment acceptable to the state universal service administrator, and
 4. Such other requirements as the state universal service administrator shall deem appropriate

- iii. Applicants for state rural broadband deployment & maintenance funds must demonstrate that state assistance will be no greater than 60% of project costs as determined at the time of project approval by the state universal service fund administrator or public utility commission.
 - iv. If multiple eligible telecommunications carriers seek to serve the same geographic area's customers, the state broadband service fund administrator or public utility commission shall give preference to:
 - 1. Providers with proven record of successful development and deployment of rural broadband services,
 - 2. Lowest amount of money requested from the state rural broadband deployment & maintenance fund, and
 - 3. Such other criteria as the state universal service fund administrator shall deem reasonable.
 - v. Eligible telecommunications carriers awarded funds from the rural broadband deployment & maintenance fund shall be reimbursed by the state universal service fund administrator or public utility commission to the dollar amount agreed upon submission of verifiable invoices for infrastructure deployment costs.
 - vi. Construction of the accepted project must be completed within five years of the date of the universal service fund administrator or public utility commission approving the project and authorizing state financial assistance.
- (e) The state universal service fund administrator or public utility commission shall have administrative rules and regulation authority to implement and administer the rural broadband deployment & maintenance fund.

6. Municipal-owned Broadband Networks

- (a) Preamble. The preference of the State is that municipal Broadband networks be built, owned, and operated by private industry. But the State also recognizes that in Rural areas the economics of building such networks may be economically less viable, relative to other areas of the State, such that private industry interest in deploying Broadband Facilities may not exist in a timeframe or at a price to the consumer that the municipality finds reasonably acceptable.

In addition to the educational, health care, and other disadvantages brought about by the lack of Broadband in unserved and underserved areas, the economic damage suffered by Rural residents is particularly substantial and worsens significantly with time. Such economic damage includes farmers unable to participate in electronic sales of

commodities/livestock, the absence of home healthcare monitoring necessitating moving to urban communities, declining populations as high school and college graduates leave because of the lack of economic opportunities, local businesses leaving so they can compete with firms with Broadband, and government agencies requiring the filing of documents electronically. The lack of Broadband in rural areas exacerbates and accelerates the ever-deepening cycle of economic and quality of life gaps between urban and rural residents. The digital divide is real and the consequences for residents, local communities, and states as a whole are significant and quantifiable.

These time and risk factors in Rural areas of the State demonstrate that exceptions to the normal State preferences for Broadband development are both necessary and justified. In such cases, municipal leaders have an obligation to identify a strategy by which their constituents will have access to Broadband services and the opportunities that therefor result.

- (b) Public-Private Models. Municipal officials shall evaluate at least five options for providing Broadband services for feasibility and sustainability. These are, in order of preference:
- i. Private-led Investment with Public Assistance. In which a privately-owned entity constructs, maintains, and operates the Broadband network, and the municipality assists by facilitating permitting, granting, and customer sign-ups and ensures that the Broadband service is not discriminatory in its service standards or areas served.
 - ii. Balanced Public-Private Partnerships. In which a municipality provides all or some of the necessary capital funds to construct the network, and one selected service provider is granted an exclusive franchise agreement for a finite period of time sufficient for the Broadband provider to recover its capital investment. At the end of that timeline, the system is open access with the incumbent Broadband provider retaining responsibility for system maintenance and operations.
 - iii. Public Assets - Open Access. In which one or more Broadband providers contract for access to a community-owned infrastructure that is developed through a local improvement district, fee for services, donations, grants, and/or other non-tax revenue sources.
 - iv. Public-Led Contracting. In which the community serves as the lead entity and Broadband provider by constructing, financing, and owning the network infrastructure with a private sector partner providing crucial network operations or other duties specifically negotiated.

- v. Fully Public Funded and Operated Networks. In which the municipality designs, builds, operates, and manages a community-wide ISP, and the municipality is responsible for all aspects of the network, including customer support and installations.

(c) Required Evaluation.

- i. Prior to a municipality investing in a fully Publicly-Funded and Operated Broadband Network and/or investing in Public-Led Contracting, municipal leaders shall evaluate each of the other options for viability and also determine the following:
 - 1. That the benefits associated with purchasing or constructing the facilities outweigh the costs;
 - 2. That the project is both feasible and sustainable; and
 - 3. That the purchase and construction of the facilities is in the interest of the general public.
 - ii. If, and only if, the Municipality determines that none of the first three options are viable and if, and only if, the Municipality makes a positive determination of costs, feasibility, sustainability, and that the action is in the interest of the general public may the Municipality invest in a publicly-owned Broadband Network and/or engage in public-led contracting.
- (d) Any facilities constructed or purchased pursuant to this section must be made available to private entities on a non-discriminatory basis under the same terms and conditions as for the facilities listed in Article 9.
- (e) Documentation detailing the rationale for the municipality's preferred Broadband build-out strategy shall be provided to [the state public utility commission/Broadband authority/broadband advisor] for review. The [the state public utility commission/Broadband authority/broadband advisor] shall not have the authority to reject a municipality's decision, but shall provide comments and guidance if the Commission deems that municipal officials ignored or over/under-estimated key operational or economic factors, possible inequitable contractual obligations, feasibility of accomplishing the objectives in the proposed timeline, and on any other factors the Commission identifies as not being in the Municipality's best interest.

7. Publicly Owned Broadband Facilities

(a) Provider access to dark fiber

- i. Dark fiber that is owned or operated by the state or a local government shall be leased to any private sector broadband provider on a cost-plus basis when a private sector broadband

provider requests to lease such dark fiber from the state or local government. The state or local government may retain enough dark fiber for reasonably anticipated 50-year fiber needs and shall not be required to enter into any lease agreement that impinges upon such needs.

- ii. The terms of any lease entered into pursuant to this section may be determined by reasonable negotiations between the state or local government and a private-sector broadband provider.
- iii. Any lease granted shall be non-exclusive and must be granted on a non-discriminatory basis.

(b) Provider access to publicly-owned towers

- i. Towers that are owned or operated by the state or a local government shall be leased to any private sector broadband provider on a cost-plus basis when a private sector broadband provider requests to lease space on such tower from the state or local government. The state or local government may require that an engineering study be conducted to ensure that the tower is structurally capable of supporting the proposed equipment. The state or local government may also retain enough space on the tower for reasonably-anticipated public safety and/or civil service needs and shall not be required to enter into any lease agreement that impinges upon such needs.
- ii. The terms of any lease entered into pursuant to this section may be determined by reasonable negotiations between the state or local government and a private-sector broadband provider.
- iii. Any lease granted shall be non-exclusive and must be granted on a non-discriminatory basis.

(c) Provider access to publicly-owned buildings and other vertical assets

- i. Buildings and other vertical assets other than towers that are owned or operated by the state or a local government shall be leased to any private sector broadband provider on a cost-plus basis when a private sector broadband provider requests to lease space on such building or other vertical asset from the state or local government. The state or local government may require that an engineering study be conducted to ensure that the building or other vertical asset is structurally capable of supporting the proposed equipment. The state or local government may also retain enough space on the tower for reasonably-anticipated public service needs and shall not be required to enter into any lease agreement that impinges upon such needs.

- ii. In the event that the building or vertical asset has historical or religious significance, the state or local government may require additional impact studies prior to granting the lease and may set reasonable and necessary restrictions on the types of equipment that can be deployed and the types of mounting devices that can be used.
- iii. The terms of any lease entered into pursuant to this section may be determined by reasonable negotiations between the state or local government and a private-sector broadband provider.
- iv. Any lease granted shall be non-exclusive and must be granted on a non-discriminatory basis.

8. Standardization

- i. One Touch Make Ready
- ii. Dig Once
 - 1. Broadband Conduit Installation in Rural Highway Projects