

# STATE OF NEW YORK

9081

## IN SENATE

May 9, 2022

Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to entitling broadband service providers to the same attachment privileges, rates, and rights as competitive local exchange carriers and cable companies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public service law is amended by adding a new section  
2 105-a to read as follows:

3 § 105-a. Definitions; broadband service providers. For the purposes of  
4 this section, the following terms shall have the following meanings:

5 1. "Broadband service provider" shall mean a broadband internet  
6 provider or any other entity that provides broadband service as defined  
7 in subdivision two of this section, either directly or through an affil-  
8 iate that uses the entity's communications facilities, regardless of  
9 whether such entity:

10 (a) provides additional services in addition to broadband service; or  
11 (b) uses its facilities in whole or in part to provide broadband  
12 service.

13 2. "Broadband service" means internet service with the capability of  
14 providing:

15 (a) download speeds of one hundred megabits per second or faster; and

16 (b) upload speeds of twenty-five megabits per second or faster.

17 3. "Make-ready" shall mean the modification or replacement of a utili-  
18 ty pole, or of the lines or equipment on the utility pole, to accommo-  
19 date additional facilities on the utility pole, as defined in 47 CFR  
20 1.1402(o), including complex make-ready, as defined in 47 CFR 1.1402(p),  
21 and simple make-ready, as defined in 47 CFR 1.1402(q).

22 4. "Communications space" shall mean the lower usable space on a util-  
23 ity pole, which typically is reserved for low-voltage communications  
24 equipment, as defined in 47 CFR 1.1402(r).

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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§ 2. Subdivision 1 of section 119-a of the public service law, as amended by chapter 68 of the laws of 2022, is amended to read as follows:

1. The commission shall prescribe just and reasonable rates, terms and conditions for attachments to utility poles and the use of utility ducts, trenches and conduits. A just and reasonable rate shall assure the utility of the recovery of not less than the additional cost of providing a pole attachment or of using a trench, duct or conduit nor more than the actual operating expenses and return on capital of the utility attributed to that portion of the pole, duct, trench or conduit used. With respect to cable television and broadband internet attachments and use, such portion shall be the percentage of total usable space on a pole or the total capacity of the duct or conduit that is occupied by the facilities of the user. Usable space shall be the space on a utility pole above the minimum grade level which can be used for the attachment of wires and cables. With respect to cable television and broadband internet attachments and use, a contract for attachments to utility poles and the use of utility ducts, trenches and conduits shall include all such poles, ducts, trenches and conduits located within a given village, town or city, pursuant to a negotiated site license and any applicable commission requirements, provided that such contract shall not impede the right of a pole owner to issue licenses based on inspections undertaken on a pole-specific basis. With respect to broadband service providers, as defined in subdivision one of section one hundred five-a of this article, such broadband service providers shall be entitled to the same attachment privileges, rates, and rights as competitive local exchange carriers and cable companies under this section. The commission shall, in addition to any responsibilities required pursuant to this section or this article, establish a process by which existing utility pole and attachment owners shall be required to provide make-ready services pursuant to section one hundred nineteen-d of this article.

§ 3. The public service law is amended by adding a new section 119-d to read as follows:

§ 119-d. Make-ready services. 1. The commission shall, with respect to cable and broadband service attachments, establish a process for the provision of timely make-ready services by pole owners of attachers:

(a) In connection with a new pole attachment being implemented by a competitive local exchange provider, a utility pole owner, incumbent local exchange provider, or broadband service provider, the commission shall promulgate a make-ready service policy providing for the timely attachment of equipment by such competitive local exchange provider or broadband service provider. The intervals established pursuant to subdivision two of this section shall supersede any intervals in any new master service agreements between any pole owner or attacher in this state.

(b) In providing such make-ready services pursuant to this section, the competitive local exchange provider, utility pole owner, incumbent local exchange provider, or broadband service provider shall abide by the timelines and applicable provisions of subdivision two of this section. Broadband service providers or competitive local exchange providers shall be authorized to coordinate a single vendor arrangement with the other stakeholders in the communications space, as defined in section one hundred five-a of this article, to address the re-arrangements and clear the non-compliance timely and efficiently and settle the cost with stakeholders upon agreements so made.

1     2. Such process for the delivery of make-ready services shall, at  
2 minimum, include:

3     (a) The commission shall prescribe the application process by a  
4 competitive local exchange provider or broadband service provider to a  
5 pole utility owner for utility pole access and the process of review and  
6 survey by the utility pole owner, which shall be limited to forty-five  
7 days, provided however, that a broadband service provider or competitive  
8 local exchange provider may hire a contractor as provided in subdivision  
9 three of this section.

10    (b) The commission shall prescribe the process for a utility pole  
11 owner to provide an estimate of all make-ready charges within fourteen  
12 days of the completion of their review and survey.

13    (c) The competitive local exchange provider or broadband service  
14 provider shall have fourteen days to accept the estimate provided by the  
15 utility pole owner or until the withdrawal of the estimate by the utili-  
16 ty, whichever is later.

17    (d) The utility shall provide written notice to the incumbent local  
18 exchange providers within seven days of acceptance of the estimate by  
19 the competitive local exchange provider or a broadband service provider.

20    (e) The incumbent local exchange provider shall prepare the pole with-  
21 in thirty days of receiving notice by the utility for existing attach-  
22 ments in the communications space.

23    (f) No master services agreement between a pole owner or attacher  
24 shall exceed the timelines set forth in this section.

25    3. (a) A broadband service provider or competitive local exchange  
26 provider may hire a contractor approved by the utility to complete the  
27 survey required by paragraph (a) of subdivision two of this section or  
28 perform any make-ready activity under this section that is not timely  
29 completed by the utility, independent local exchange provider, or other  
30 attachment owner. A single vendor approved by the owner shall complete  
31 the make-ready work as directed by the broadband service provider or  
32 competitive local exchange provider.

33    (b) A broadband service provider shall provide reasonably timely  
34 notice to the utility and each person with an existing pole attachment  
35 on an affected pole that such provider intends to hire a contractor  
36 pursuant to this subdivision.

37    4. A broadband service provider may use extension arms and temporary  
38 attachments pending the completion of make-ready activities if use of  
39 extension arms and temporary attachments complies with the national  
40 electrical safety code or other applicable safety codes. A utility may  
41 require a broadband service provider to convert a temporary attachment  
42 to a permanent attachment not later than sixty days after the date of  
43 the completion of make-ready activities and may require the provider to  
44 comply with the national electrical safety code or other applicable  
45 safety codes.

46    5. No broadband service provider shall be required to meet pole  
47 attachment specifications that exceed the specifications in the national  
48 electrical safety code, applicable fire safety codes, or any building  
49 code or similar code of general applicability for the protection of  
50 public health, safety, or welfare adopted by a political subdivision  
51 prior to the submission of such provider's application to the utility in  
52 accordance with the provisions of this section.

53    6. The attorney general, upon his or her own motion or upon referral  
54 from the public service commission, shall be authorized to bring a civil  
55 action against any pole owner found in violation of any provision of  
56 this section and may recover (a) a civil penalty not to exceed one thou-

1 sand dollars per day for each violation; and (b) costs and reasonable  
2 attorney's fees. In any such proceeding the court may direct restitu-  
3 tion.

4 7. The commission shall promulgate such rules and regulations as are  
5 necessary to effectuate the provisions of this section no later than six  
6 months after the effective date of this section.

7 § 4. This act shall take effect immediately.