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:

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

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

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

(a) provides additional services in addition to broadband service; or

(b) uses its facilities in whole or in part to provide broadband service.

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

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

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

3. "Make-ready" shall mean the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole, as defined in 47 CFR 1.1402(o), including complex make-ready, as defined in 47 CFR 1.1402(p), and simple make-ready, as defined in 47 CFR 1.1402(q).

4. "Communications space" shall mean the lower usable space on a utility pole, which typically is reserved for low-voltage communications 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.

LBD15583-01-2

§ 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.

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

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

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

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

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

(e) The incumbent local exchange provider shall prepare the pole within thirty days of receiving notice by the utility for existing attachments in the communications space.

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

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

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

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

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

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

sand dollars per day for each violation; and (b) costs and reasonable attorney's fees. In any such proceeding the court may direct restitution.

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

§ 4. This act shall take effect immediately.