

FIRST REGULAR SESSION

SENATE BILL NO. 71

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR FITZWATER.

0767S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 386.020 and 523.010, RSMo, and to enact in lieu thereof four new sections relating to broadband infrastructure.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 386.020 and 523.010, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be
3 known as sections 386.020, 393.1420, 393.1800, and 523.010, to
4 read as follows:

386.020. As used in this chapter, the following words
2 and phrases mean:

3 (1) "Alternative local exchange telecommunications
4 company", a local exchange telecommunications company
5 certified by the commission to provide basic or nonbasic
6 local telecommunications service or switched exchange access
7 service, or any combination of such services, in a specific
8 geographic area subsequent to December 31, 1995;

9 (2) "Alternative operator services company", any
10 certificated interexchange telecommunications company which
11 receives more than forty percent of its annual Missouri
12 intrastate telecommunications service revenues from the
13 provision of operator services pursuant to operator services
14 contracts with traffic aggregators;

15 (3) "Basic interexchange telecommunications service"
16 includes, at a minimum, two-way switched voice service
17 between points in different local calling scopes as

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted
and is intended to be omitted in the law.**

18 determined by the commission and shall include other
19 services as determined by the commission by rule upon
20 periodic review and update;

21 (4) "Basic local telecommunications service", two-way
22 switched voice service within a local calling scope as
23 determined by the commission comprised of any of the
24 following services and their recurring and nonrecurring
25 charges:

26 (a) Multiparty, single line, including installation,
27 touchtone dialing, and any applicable mileage or zone
28 charges;

29 (b) Assistance programs for installation of, or access
30 to, basic local telecommunications services for qualifying
31 economically disadvantaged or disabled customers or both,
32 including, but not limited to, lifeline services and link-up
33 Missouri services for low-income customers or dual-party
34 relay service for the hearing impaired and speech impaired;

35 (c) Access to local emergency services including, but
36 not limited to, 911 service established by local authorities;

37 (d) Access to basic local operator services;

38 (e) Access to basic local directory assistance;

39 (f) Standard intercept service;

40 (g) Equal access to interexchange carriers consistent
41 with rules and regulations of the Federal Communications
42 Commission;

43 (h) One standard white pages directory listing.

44 Basic local telecommunications service does not include
45 optional toll-free calling outside a local calling scope but
46 within a community of interest, available for an additional
47 monthly fee or the offering or provision of basic local

48 telecommunications service at private shared-tenant service
49 locations;

50 (5) "Cable television service", the one-way
51 transmission to subscribers of video programming or other
52 programming service and the subscriber interaction, if any,
53 which is required for the selection of such video
54 programming or other programming service;

55 (6) "Carrier of last resort", any telecommunications
56 company which is obligated to offer basic local
57 telecommunications service to all customers who request
58 service in a geographic area defined by the commission and
59 cannot abandon this obligation without approval from the
60 commission;

61 (7) "Commission", the "Public Service Commission"
62 hereby created;

63 (8) "Commissioner", one of the members of the
64 commission;

65 (9) "Competitive telecommunications company", a
66 telecommunications company which has been classified as such
67 by the commission pursuant to section 392.245 or 392.361;

68 (10) "Competitive telecommunications service", a
69 telecommunications service which has been classified as such
70 by the commission pursuant to section 392.245 or to section
71 392.361, or which has become a competitive
72 telecommunications service pursuant to section 392.370;

73 (11) "Corporation" includes a corporation, company,
74 association and joint stock association or company;

75 (12) "Customer-owned pay telephone", a privately owned
76 telecommunications device that is not owned, leased or
77 otherwise controlled by a local exchange telecommunications
78 company and which provides telecommunications services for a
79 use fee to the general public;

80 (13) "Effective competition" shall be determined by
81 the commission based on:

82 (a) The extent to which services are available from
83 alternative providers in the relevant market;

84 (b) The extent to which the services of alternative
85 providers are functionally equivalent or substitutable at
86 comparable rates, terms and conditions;

87 (c) The extent to which the purposes and policies of
88 chapter 392, including the reasonableness of rates, as set
89 out in section 392.185, are being advanced;

90 (d) Existing economic or regulatory barriers to entry;
91 and

92 (e) Any other factors deemed relevant by the
93 commission and necessary to implement the purposes and
94 policies of chapter 392;

95 (14) "Electric plant" includes all real estate,
96 fixtures and personal property operated, controlled, owned,
97 used or to be used for, [or] in connection with, or to
98 facilitate the generation, transmission, distribution, sale
99 or furnishing of electricity for light, heat or power; and
100 any conduits, ducts or other devices, materials, apparatus
101 or property for containing, holding or carrying conductors
102 used or to be used for the transmission of electricity for
103 light, heat or power; **and broadband infrastructure operated,**
104 **controlled, owned, used, or to be used for, in connection**
105 **with, or to facilitate the generation, transmission, or**
106 **distribution of electricity or broadband infrastructure**
107 **services. For purposes of this subdivision, "broadband**
108 **infrastructure" and "broadband infrastructure services" mean**
109 **the same as in subsection 2 of section 393.1420;**

110 (15) "Electrical corporation" includes every
111 corporation, company, association, joint stock company or

112 association, partnership and person, their lessees, trustees
113 or receivers appointed by any court whatsoever, other than a
114 railroad, light rail or street railroad corporation
115 generating electricity solely for railroad, light rail or
116 street railroad purposes or for the use of its tenants and
117 not for sale to others, owning, operating, controlling or
118 managing any electric plant except where electricity is
119 generated or distributed by the producer solely on or
120 through private property for railroad, light rail or street
121 railroad purposes or for its own use or the use of its
122 tenants and not for sale to others. The term "electrical
123 corporation" shall not include:

124 (a) Municipally owned electric utilities operating
125 under chapter 91;

126 (b) Rural electric cooperatives operating under
127 chapter 394;

128 (c) Persons or corporations not otherwise engaged in
129 the production or sale of electricity at wholesale or retail
130 that sell, lease, own, control, operate, or manage one or
131 more electric vehicle charging stations;

132 (d) **Persons or corporations that are not engaged in
133 the generation, transmission, or distribution of electricity
134 at wholesale or retail but that operate or control some
135 portion of an electrical corporation's broadband
136 infrastructure in connection with broadband infrastructure
137 services provided by the electrical corporation, as
138 "broadband infrastructure" and "broadband infrastructure
139 services" are defined in subsection 2 of section 393.1420;**

140 (16) "Exchange", a geographical area for the
141 administration of telecommunications services, established
142 and described by the tariff of a telecommunications company
143 providing basic local telecommunications service;

144 (17) "Exchange access service", a service provided by
145 a local exchange telecommunications company which enables a
146 telecommunications company or other customer to enter and
147 exit the local exchange telecommunications network in order
148 to originate or terminate interexchange telecommunications
149 service;

150 (18) "Gas corporation" includes every corporation,
151 company, association, joint stock company or association,
152 partnership and person, their lessees, trustees or receivers
153 appointed by any court whatsoever, owning, operating,
154 controlling or managing any gas plant operating for public
155 use under privilege, license or franchise now or hereafter
156 granted by the state or any political subdivision, county or
157 municipality thereof;

158 (19) "Gas plant" includes all real estate, fixtures
159 and personal property owned, operated, controlled, used or
160 to be used for or in connection with or to facilitate the
161 manufacture, distribution, sale or furnishing of gas,
162 natural or manufactured, for light, heat or power;

163 (20) "Heating company" includes every corporation,
164 company, association, joint stock company or association,
165 partnership and person, their lessees, trustees or
166 receivers, appointed by any court whatsoever, owning,
167 operating, managing or controlling any plant or property for
168 manufacturing and distributing and selling, for
169 distribution, or distributing hot or cold water, steam or
170 currents of hot or cold air for motive power, heating,
171 cooking, or for any public use or service, in any city, town
172 or village in this state; provided, that no agency or
173 authority created by or operated pursuant to an interstate
174 compact established pursuant to section 70.370 shall be a
175 heating company or subject to regulation by the commission;

176 (21) "High-cost area", a geographic area, which shall
177 follow exchange boundaries and be no smaller than an
178 exchange nor larger than a local calling scope, where the
179 cost of providing basic local telecommunications service as
180 determined by the commission, giving due regard to recovery
181 of an appropriate share of joint and common costs as well as
182 those costs related to carrier of last resort obligations,
183 exceeds the rate for basic local telecommunications service
184 found reasonable by the commission;

185 (22) "Incumbent local exchange telecommunications
186 company", a local exchange telecommunications company
187 authorized to provide basic local telecommunications service
188 in a specific geographic area as of December 31, 1995, or a
189 successor in interest to such a company;

190 (23) "Interconnected voice over internet protocol
191 service", service that:

192 (a) Enables real-time, two-way voice communications;
193 (b) Requires a broadband connection from the user's
194 location;

195 (c) Requires internet protocol-compatible customer
196 premises equipment; and

197 (d) Permits users generally to receive calls that
198 originate on the public switched telephone network and to
199 terminate calls to the public switched telephone network;

(24) "Interexchange telecommunications company", any company engaged in the provision of interexchange telecommunications service;

203 (25) "Interexchange telecommunications service",
204 telecommunications service between points in two or more
205 exchanges;

206 (26) "InterLATA", interexchange telecommunications
207 service between points in different local access and
208 transportation areas;

209 (27) "IntraLATA", interexchange telecommunications
210 service between points within the same local access and
211 transportation area;

212 (28) "Light rail" includes every rail transportation
213 system in which one or more rail vehicles are propelled
214 electrically by overhead catenary wire upon tracks located
215 substantially within an urban area and are operated
216 exclusively in the transportation of passengers and their
217 baggage, and including all bridges, tunnels, equipment,
218 switches, spurs, tracks, stations, used in connection with
219 the operation of light rail;

220 (29) "Line" includes route;

221 (30) "Local access and transportation area" or "LATA",
222 contiguous geographic area approved by the U.S. District
223 Court for the District of Columbia in United States v.
224 Western Electric, Civil Action No. 82-0192 that defines the
225 permissible areas of operations for the Bell Operating
226 companies;

227 (31) "Local exchange telecommunications company", any
228 company engaged in the provision of local exchange
229 telecommunications service. A local exchange
230 telecommunications company shall be considered a "large
231 local exchange telecommunications company" if it has at
232 least one hundred thousand access lines in Missouri and a
233 "small local exchange telecommunications company" if it has
234 less than one hundred thousand access lines in Missouri;

235 (32) "Local exchange telecommunications service",
236 telecommunications service between points within an exchange;

237 (33) "Long-run incremental cost", the change in total
238 costs of the company of producing an increment of output in
239 the long run when the company uses least cost technology,
240 and excluding any costs that, in the long run, are not
241 brought into existence as a direct result of the increment
242 of output. The relevant increment of output shall be the
243 level of output necessary to satisfy total current demand
244 levels for the service in question, or, for new services,
245 demand levels that can be demonstrably anticipated;

246 (34) "Municipality" includes a city, village or town;

247 (35) "Nonbasic telecommunications services" shall be
248 all regulated telecommunications services other than basic
249 local and exchange access telecommunications services, and
250 shall include the services identified in paragraphs (d) and
251 (e) of subdivision (4) of this section. Any retail
252 telecommunications service offered for the first time after
253 August 28, 1996, shall be classified as a nonbasic
254 telecommunications service, including any new service which
255 does not replace an existing service;

256 (36) "Noncompetitive telecommunications company", a
257 telecommunications company other than a competitive
258 telecommunications company or a transitionally competitive
259 telecommunications company;

260 (37) "Noncompetitive telecommunications service", a
261 telecommunications service other than a competitive or
262 transitionally competitive telecommunications service;

263 (38) "Operator services", operator-assisted
264 interexchange telecommunications service by means of either
265 human or automated call intervention and includes, but is
266 not limited to, billing or completion of calling card,
267 collect, person-to-person, station-to-station or third
268 number billed calls;

269 (39) "Operator services contract", any agreement
270 between a traffic aggregator and a certificated
271 interexchange telecommunications company to provide operator
272 services at a traffic aggregator location;

273 (40) "Person" includes an individual, and a firm or
274 copartnership;

275 (41) "Private shared tenant services" includes the
276 provision of telecommunications and information management
277 services and equipment within a user group located in
278 discrete private premises as authorized by the commission by
279 a commercial-shared services provider or by a user
280 association, through privately owned customer premises
281 equipment and associated data processing and information
282 management services and includes the provision of
283 connections to the facilities of local exchange
284 telecommunications companies and to interexchange
285 telecommunications companies;

286 (42) "Private telecommunications system", a
287 telecommunications system controlled by a person or
288 corporation for the sole and exclusive use of such person,
289 corporation or legal or corporate affiliate thereof;

290 (43) "Public utility" includes every pipeline
291 corporation, gas corporation, electrical corporation,
292 telecommunications company, water corporation, heating
293 company or refrigerating corporation, and sewer corporation,
294 as these terms are defined in this section, and each thereof
295 is hereby declared to be a public utility and to be subject
296 to the jurisdiction, control and regulation of the
297 commission and to the provisions of this chapter;

298 (44) "Railroad" includes every railroad and railway,
299 other than street railroad or light rail, by whatsoever
300 power operated for public use in the conveyance of persons

301 or property for compensation, with all bridges, ferries,
302 tunnels, equipment, switches, spurs, tracks, stations, real
303 estate and terminal facilities of every kind used, operated,
304 controlled or owned by or in connection with any such
305 railroad;

306 (45) "Railroad corporation" includes every
307 corporation, company, association, joint stock company or
308 association, partnership and person, their lessees, trustees
309 or receivers appointed by any court whatsoever, owning,
310 holding, operating, controlling or managing any railroad as
311 defined in this section, or any cars or other equipment used
312 thereon or in connection therewith;

313 (46) "Rate", every individual or joint rate, fare,
314 toll, charge, reconsigning charge, switching charge, rental
315 or other compensation of any corporation, person or public
316 utility, or any two or more such individual or joint rates,
317 fares, tolls, charges, reconsigning charges, switching
318 charges, rentals or other compensations of any corporation,
319 person or public utility or any schedule or tariff thereof;

320 (47) "Resale of telecommunications service", the
321 offering or providing of telecommunications service
322 primarily through the use of services or facilities owned or
323 provided by a separate telecommunications company, but does
324 not include the offering or providing of private shared
325 tenant services;

326 (48) "Service" includes not only the use and
327 accommodations afforded consumers or patrons, but also any
328 product or commodity furnished by any corporation, person or
329 public utility and the plant, equipment, apparatus,
330 appliances, property and facilities employed by any
331 corporation, person or public utility in performing any
332 service or in furnishing any product or commodity and

333 devoted to the public purposes of such corporation, person
334 or public utility, and to the use and accommodation of
335 consumers or patrons;

336 (49) "Sewer corporation" includes every corporation,
337 company, association, joint stock company or association,
338 partnership or person, their lessees, trustees or receivers
339 appointed by any court, owning, operating, controlling or
340 managing any sewer system, plant or property, for the
341 collection, carriage, treatment, or disposal of sewage
342 anywhere within the state for gain, except that the term
343 shall not include sewer systems with fewer than twenty-five
344 outlets;

345 (50) "Sewer system" includes all pipes, pumps, canals,
346 lagoons, plants, structures and appliances, and all other
347 real estate, fixtures and personal property, owned,
348 operated, controlled or managed in connection with or to
349 facilitate the collection, carriage, treatment and disposal
350 of sewage for municipal, domestic or other beneficial or
351 necessary purpose;

352 (51) "Street railroad" includes every railroad by
353 whatsoever type of power operated, and all extensions and
354 branches thereof and supplementary facilities thereto by
355 whatsoever type of vehicle operated, for public use in the
356 conveyance of persons or property for compensation, mainly
357 providing local transportation service upon the streets,
358 highways and public places in a municipality, or in and
359 adjacent to a municipality, and including all cars, buses
360 and other rolling stock, equipment, switches, spurs, tracks,
361 poles, wires, conduits, cables, subways, tunnels, stations,
362 terminals and real estate of every kind used, operated or
363 owned in connection therewith but this term shall not
364 include light rail as defined in this section; and the term

365 "street railroad" when used in this chapter shall also
366 include all motor bus and trolley bus lines and routes and
367 similar local transportation facilities, and the rolling
368 stock and other equipment thereof and the appurtenances
369 thereto, when operated as a part of a street railroad or
370 trolley bus local transportation system, or in conjunction
371 therewith or supplementary thereto, but such term shall not
372 include a railroad constituting or used as part of a trunk
373 line railroad system and any street railroad as defined
374 above which shall be converted wholly to motor bus operation
375 shall nevertheless continue to be included within the term
376 street railroad as used herein;

377 (52) "Telecommunications company" includes telephone
378 corporations as that term is used in the statutes of this
379 state and every corporation, company, association, joint
380 stock company or association, partnership and person, their
381 lessees, trustees or receivers appointed by any court
382 whatsoever, owning, operating, controlling or managing any
383 facilities used to provide telecommunications service for
384 hire, sale or resale within this state. **The term**
385 **"telecommunications company" shall not include electrical**
386 **corporations that utilize broadband infrastructure to**
387 **provide broadband infrastructure services, as "broadband**
388 **infrastructure" and "broadband infrastructure services" are**
389 **defined in subsection 2 of section 393.1420;**

390 (53) "Telecommunications facilities" includes lines,
391 conduits, ducts, poles, wires, cables, crossarms, receivers,
392 transmitters, instruments, machines, appliances and all
393 devices, real estate, easements, apparatus, property and
394 routes used, operated, controlled or owned by any
395 telecommunications company to facilitate the provision of
396 telecommunications service;

397 (54) "Telecommunications service", the transmission of
398 information by wire, radio, optical cable, electronic
399 impulses, or other similar means. As used in this
400 definition, "information" means knowledge or intelligence
401 represented by any form of writing, signs, signals,
402 pictures, sounds, or any other symbols. Telecommunications
403 service does not include:

404 (a) The rent, sale, lease, or exchange for other value
405 received of customer premises equipment except for customer
406 premises equipment owned by a telephone company certificated
407 or otherwise authorized to provide telephone service prior
408 to September 28, 1987, and provided under tariff or in
409 inventory on January 1, 1983, which must be detariffed no
410 later than December 31, 1987, and thereafter the provision
411 of which shall not be a telecommunications service, and
412 except for customer premises equipment owned or provided by
413 a telecommunications company and used for answering 911 or
414 emergency calls;

415 (b) Answering services and paging services;

416 (c) The offering of radio communication services and
417 facilities when such services and facilities are provided
418 under a license granted by the Federal Communications
419 Commission under the commercial mobile radio services rules
420 and regulations;

421 (d) Services provided by a hospital, hotel, motel, or
422 other similar business whose principal service is the
423 provision of temporary lodging through the owning or
424 operating of message switching or billing equipment solely
425 for the purpose of providing at a charge telecommunications
426 services to its temporary patients or guests;

427 (e) Services provided by a private telecommunications
428 system;

- 429 (f) Cable television service;
 - 430 (g) The installation and maintenance of inside wire
 - 431 within a customer's premises;
 - 432 (h) Electronic publishing services;
 - 433 (i) Services provided pursuant to a broadcast radio or
 - 434 television license issued by the Federal Communications
 - 435 Commission; or
 - 436 (j) Interconnected voice over internet protocol
 - 437 service;
- 438 (55) "Telephone cooperative", every corporation
439 defined as a telecommunications company in this section, in
440 which at least ninety percent of those persons and
441 corporations subscribing to receive local telecommunications
442 service from the corporation own at least ninety percent of
443 the corporation's outstanding and issued capital stock and
444 in which no subscriber owns more than two shares of the
445 corporation's outstanding and issued capital stock;
- 446 (56) "Traffic aggregator", any person, firm,
447 partnership or corporation which furnishes a telephone for
448 use by the public and includes, but is not limited to,
449 telephones located in rooms, offices and similar locations
450 in hotels, motels, hospitals, colleges, universities,
451 airports and public or customer-owned pay telephone
452 locations, whether or not coin operated;
- 453 (57) "Transitionally competitive telecommunications
454 company", an interexchange telecommunications company which
455 provides any noncompetitive or transitionally competitive
456 telecommunications service, except for an interexchange
457 telecommunications company which provides only
458 noncompetitive telecommunications service;
- 459 (58) "Transitionally competitive telecommunications
460 service", a telecommunications service offered by a

461 noncompetitive or transitionally competitive
462 telecommunications company and classified as transitionally
463 competitive by the commission pursuant to section 392.361 or
464 392.370;

465 (59) "Water corporation" includes every corporation,
466 company, association, joint stock company or association,
467 partnership and person, their lessees, trustees, or
468 receivers appointed by any court whatsoever, owning,
469 operating, controlling or managing any plant or property,
470 dam or water supply, canal, or power station, distributing
471 or selling for distribution, or selling or supplying for
472 gain any water;

473 (60) "Water system" includes all reservoirs, tunnels,
474 shafts, dams, dikes, headgates, pipes, flumes, canals,
475 structures and appliances, and all other real estate,
476 fixtures and personal property, owned, operated, controlled
477 or managed in connection with or to facilitate the
478 diversion, development, storage, supply, distribution, sale,
479 furnishing or carriage of water for municipal, domestic or
480 other beneficial use.

393.1420. 1. This section shall be known and may be
2 cited as the "Electrical Corporation Broadband Authorization
3 Act".

4 2. As used in this section, the following terms shall
5 mean:

6 (1) "Broadband infrastructure", any and all component
7 parts of an electrical corporation's infrastructure that may
8 be used to provide broadband infrastructure services,
9 whether now existing or that may be developed in the future,
10 and including, but not limited to, wires, copper cables,
11 fiber optic cables, conduits, ducts, poles, antennas,

12 transmitters, receivers, amplifiers, switches, multiplexers,
13 routers, servers, and all appurtenances thereto;

14 (2) "Broadband infrastructure services":

15 (a) The provision of access to dark fiber within fiber
16 optic cables:

17 a. To an end-use customer for the end-use customer's
18 private telecommunications system, provided that such access
19 shall be provided at the electrical corporation's premises
20 and such end-use customer shall bear all costs and
21 responsibility for developing an interconnection from such
22 end-use customer's premises to the dark fiber at the
23 electrical corporation's premises; or

24 b. To a third party that does not use the fiber as an
25 end-use customer; or

26 (b) The provision of connectivity, via lit fiber or
27 other components of the broadband infrastructure, whether to
28 a data or information transmission medium, or to a
29 technology, and in either case for purposes of accessing the
30 internet or providing other capabilities including, but not
31 limited to, information sharing, information storage,
32 information content, or protocol conversion, provided,
33 however, that the provision of such connectivity shall only
34 be made to a third party for resale and shall not be made to
35 an end-use customer of such connectivity;

36 (3) "Commission", the public service commission;

37 (4) "Electrical corporation", the same as defined in
38 section 386.020.

39 3. (1) To the extent not otherwise authorized by law,
40 and in addition to all other purposes for which electrical
41 corporations may be formed under the laws of this state and
42 all other powers and authority currently granted to
43 electrical corporations under the laws of this state, an

44 electrical corporation shall be authorized to do any or all
45 of the following:

46 (a) Own, construct, install, maintain, repair, and
47 replace broadband infrastructure;

48 (b) Operate the electrical corporation's broadband
49 infrastructure for or in connection with the electrical
50 corporation's provision of electric service;

51 (c) Provide broadband infrastructure services using
52 the electrical corporation's broadband infrastructure; and

53 (d) Subject to the provisions of section 416.031,
54 enter into contracts, leases, licenses, or other agreements
55 concerning the provision of broadband infrastructure
56 services on any terms and conditions, including rates and
57 charges, as the electrical corporation in its sole
58 discretion shall determine and, notwithstanding the
59 provisions of section 393.190 or any other law to the
60 contrary, without securing any authorization, permission, or
61 approval from the commission.

62 (2) An electrical corporation shall not require any of
63 its electric service customers to purchase broadband
64 infrastructure services provided via the electrical
65 corporation's broadband infrastructure as a condition of
66 receiving or continuing to receive electric service from the
67 electrical corporation.

68 (3) An electrical corporation shall not disconnect any
69 customer from receiving electric service due to the
70 customer's failure to pay for broadband infrastructure
71 services provided via the electrical corporation's broadband
72 infrastructure.

73 (4) An electrical corporation shall require
74 contributions in aid of construction from any customer or
75 third party to whom it provides broadband infrastructure

76 services, in the amount of the cost of any item of broadband
77 infrastructure installed by the electrical corporation to
78 provide broadband infrastructure services solely to such
79 customer or third party.

80 4. (1) As used in this subsection, "broadband
81 infrastructure services revenue" shall mean revenue received
82 by an electrical corporation for the provision of broadband
83 infrastructure services.

84 (2) When determining the revenue requirement used to
85 set the electrical corporation's base rates in the
86 electrical corporation's general rate proceedings, the
87 following shall be included:

88 (a) The electrical corporation's test year broadband
89 infrastructure services revenues, as updated, trued-up, or
90 normalized, if applicable;

91 (b) The electrical corporation's prudently-incurred
92 test year operations and maintenance expenditures associated
93 with generating the revenues in paragraph (a) of this
94 subdivision, as updated, trued-up, or normalized, if
95 applicable; and

96 (c) The electrical corporation's prudently-incurred
97 investment in broadband infrastructure as of the date the
98 electrical corporation's other rate base additions are
99 accounted for.

100 The commission shall determine the prudence of the revenues,
101 expenditures, and investments covered by paragraphs (a) to
102 (c) of this subdivision consistent with existing law
103 respecting the burdens of production and persuasion in
104 general rate proceedings applicable to utility expenditures
105 and investments.

106 (3) Any ordinance adopted under section 71.520 or
107 assent granted under section 229.100 shall also grant the
108 electrical corporation the right to construct, install,
109 maintain, repair, and replace broadband infrastructure and
110 the right to provide broadband infrastructure services via
111 the electrical corporation's broadband infrastructure on and
112 subject to the terms and conditions of such ordinance or
113 assent.

5. Notwithstanding any provision of chapters 386 or
393 to the contrary, and consistent with the authority and
discretion granted to electrical corporations in paragraph
(d) of subdivision (1) of subsection 3 of this section, the
commission shall not have jurisdiction over the terms,
conditions, charges, contracts, leases, licenses, or other
agreements of an electrical corporation for the electrical
corporation's provision of broadband infrastructure services.

393.1800. 1. This section applies to any inverse
2 condemnation or trespass cause of action, whether common law
3 or statutory, brought against an electrical corporation,
4 against a rural electric cooperative operating under chapter
5 394, or against a municipally owned or operated electric
6 utility operating under chapter 91, where:

7 (1) The defendant has an easement in real property;

8 (2) The defendant uses the real property;

14 (4) The use complained of involves the use of an
15 electric plant for broadband infrastructure services, or the

16 use of electric transmission lines or systems in providing
17 access to broadband services; and

18 (5) The cause of action accrues after August 28, 2023.

19 2. Any cause of action for inverse condemnation
20 described in subsection 1 of this section shall be commenced
21 within two years after the cause of action shall have
22 accrued and in default thereof be barred, and to the extent
23 that any general statute of limitations including, but not
24 limited to, sections 516.010, 516.110, and 516.120; any
25 special statute of limitations; or the common law of this
26 state would extend the two-year period for commencing a
27 cause of action for inverse condemnation described in
28 subsection 1 of this section, the common law and any such
29 statutes of limitation are hereby superseded and displaced.

30 3. Any cause of action for trespass described in
31 subsection 1 of this section shall be commenced within two
32 years after the cause of action shall have accrued and in
33 default thereof be barred, and to the extent any general
34 statute of limitations including, but not limited to,
35 sections 516.010, 516.110, and 516.120; any special statute
36 of limitations; or the common law of this state would extend
37 the two-year period for commencing a cause of action for
38 trespass described in subsection 1 of this section, the
39 common law and any such statutes of limitation are hereby
40 superseded and displaced.

41 4. In a cause of action for inverse condemnation
42 described in subsection 1 of this section, if the plaintiff
43 prevails, the damage or taking shall be deemed permanent,
44 the injury to the plaintiff shall not be deemed to continue
45 to accumulate or to accrue, and the damages, past, present,
46 and future, resulting therefrom, which shall always be
47 greater than zero, shall be fixed and determined as of the

48 date the expanded use that increased the burden of the
49 defendant's easement or use that exceeded the scope of the
50 defendant's easement rights, initially occurred.

51 5. In a cause of action for trespass described in
52 subsection 1 of this section, a defendant shall be entitled
53 to a determination by the court as to whether the use by the
54 defendant or its assignees, alleged by the plaintiff to be
55 an expanded use that increases the burden of the defendant's
56 easement, or to exceed the scope of the defendant's easement
57 rights, is a public use; and:

58 (1) If the court finds that such use is a public use,
59 and if the plaintiff prevails on the claim for trespass:

60 (a) The plaintiff shall not be granted an order of
61 ejectment;

62 (b) The plaintiff shall not be granted any equitable
63 remedies; and

64 (c) The trespass shall be deemed permanent, the injury
65 to the plaintiff shall not be deemed to continue to
66 accumulate or accrue, and the damages, past, present, and
67 future, resulting therefrom, which shall always be greater
68 than zero, and which may include damages for physical damage
69 to the property caused by the defendant's wrongful use prior
70 to suit, shall be fixed and determined as of the date the
71 expanded use that increased the burden of the defendant's
72 easement rights or use that exceeded the scope of the
73 defendant's easement rights, initially occurred; or

74 (2) If the court finds such a use is not a public use,
75 and if the plaintiff prevails on the claim of trespass,
76 nothing shall prevent a determination of whether such use is
77 permanent or temporary or prevent the plaintiff from
78 pursuing remedies or relief not available under the
79 provisions of subdivision (1) of this subsection.

80 6. If a plaintiff prevails in a cause of action
81 described in subsection 1 of this section, the finder of
82 fact shall make a determination as to whether the expanded
83 use that increased the burden of the defendant's easement or
84 the use that exceeded the scope of the defendant's easement
85 rights did or did not occur outside of the footprint of the
86 defendant's easement. If the finder of fact finds such
87 wrongful use did not occur outside the footprint of the
88 defendant's easement:

89 (1) The plaintiff shall not be entitled to, nor may
90 the plaintiff be awarded, any punitive damages;

91 (2) The plaintiff shall not be entitled to, nor may
92 the plaintiff be awarded, attorneys' fees, costs, or
93 expenses, except as provided in subdivision (5) of this
94 subsection;

95 (3) The court may treble the damages awarded, if any,
96 by the finder of fact for physical damage to the property
97 caused by the defendant's wrongful use prior to suit;

98 (4) Should the plaintiff prove to the court that such
99 wrongful use by the defendant has prevented the plaintiff
100 from using a portion or portions of the plaintiff's property
101 lying exclusively within the footprint of the easement in
102 substantially the same manner as such portion or portions
103 were being utilized immediately prior to the wrongful use,
104 then the court may increase the damages awarded to an amount
105 not to exceed the lesser of:

106 (a) Treble the damages awarded by the finder of fact;
107 or

108 (b) The fair market value of the portion or portions
109 of the plaintiff's property lying exclusively within the
110 footprint of the easement that the plaintiff has been
111 prevented, by the defendant's wrongful use, from using in

112 substantially the same manner as the portion or portions
113 were being utilized immediately prior to such wrongful use;

114 (5) In the alternative, and not in addition to
115 subdivision (4) of this subsection, should the plaintiff
116 prove to the court that such wrongful use by the defendant
117 has prevented the plaintiff from using some portion or
118 portions of the plaintiff's property that does not lie
119 exclusively within the footprint of the easement in
120 substantially the same manner as such portion or portions
121 were being utilized immediately prior to the wrongful use,
122 the court may award the plaintiff reasonable attorneys'
123 fees, costs, and expenses.

124 Provided, however, with regard to subdivisions (4) and (5)
125 of this subsection, if the plaintiff seeks such damages but
126 does not meet the burden of proof, upon motion by the
127 defendant, if the court finds the plaintiff's claim for such
128 damages was factually frivolous, the court may award the
129 defendant its reasonable attorneys' fees, costs, and
130 expenses incurred in defending against such claim by the
131 plaintiff.

132 7. To the extent the common law of this state or the
133 provisions of any statute including, but not limited to,
134 section 523.283 and subdivision (11) of subsection 1 of
135 section 394.080, would entitle or permit a plaintiff
136 prevailing in a cause of action described in subsection 1 of
137 this section to receive relief or damages or pursue a remedy
138 expressly prohibited in subsection 4, 5, or 6 of this
139 section, the common law and any such other statutes are
140 hereby superseded and displaced.

141 8. As used in this section, the following terms mean:

142 (1) "Easement", includes express easements the terms
143 of which have been reduced to writing, whether acquired
144 voluntarily or by condemnation, as well as prescriptive
145 easements, implied easements, and easements by estoppel;

146 (2) "Footprint", the area or areas described in an
147 express easement within the bounds of which the defendant
148 easement holder may exercise easement rights granted,
149 including rights of access, or if the area or areas are not
150 described in the express easement or if the easement is
151 other than an express easement, the area or areas the
152 locations and dimensions of which are determined by the
153 court from evidence of the prior uses of the easement by the
154 defendant easement holder and determined by the court to be
155 reasonably necessary to accomplish the defendant easement
156 holder's prior uses;

157 (3) "Railroad corporation", the same as defined in
158 section 388.010.

159 9. Upon the payment of an award of damages to a
160 plaintiff who prevails in a cause of action described in
161 subsection 1 of this section for inverse condemnation, or
162 who prevails in a cause of action described in subsection 1
163 of this section for a trespass where the court has
164 determined that the expanded use that increased the burden
165 of the defendant's easement or the use that exceeded the
166 scope of the defendant's easement rights is a public use,
167 the scope of the defendant's easement shall be permanently
168 expanded to include the uses that, prior to the payment,
169 were found to have increased the burden of the defendant's
170 easement or exceeded the scope of the defendant's easement
171 rights, including leasing, licensing, or otherwise
172 permitting or agreeing to the uses by, another party;
173 provided that thereafter, if the defendant in the exercise

174 of its expanded easement rights should cause physical damage
175 to the property, the defendant shall, at the defendant's
176 option, either cause the property to be restored to the
177 condition it was in immediately prior to causing the
178 physical damage or pay damages to the property owner to
179 compensate the property owner for such physical damage,
180 except in the event that the physical damage creates an
181 immediate threat to life, property, or safety, in which case
182 the property owner may proceed to restore the property to
183 its condition prior to such damage and in which case the
184 defendant shall be liable to the property owner for the
185 property owner's reasonably incurred expenses of restoration.

186 10. Recognizing that individual characteristics of
187 every parcel of land make every parcel unique, incapable of
188 duplication, and of particular value, such that the damages
189 awarded in any trespass or inverse condemnation involving
190 real property shall be determined on an individualized,
191 parcel by parcel basis, no cause of action described in
192 subsection 1 of this section may be brought as an action on
193 behalf of a class. The limitation in this subsection is a
194 substantive limitation and allowing a person to bring a
195 class action or other representative action would abridge,
196 enlarge, or modify the substantive rights addressed by this
197 section.

198 11. In a cause of action described in subsection 1 of
199 this section, the following shall not be admissible in
200 evidence, for purposes of determining the plaintiff's
201 damages or any other purpose:

202 (1) Profits, fees, or revenue derived by the defendant
203 from uses by the defendant or its assignees of the easement;
204 and

205 (2) The rental value of the real property or of the
206 easement, including the rental value of an assembled utility
207 corridor of any type.

208 12. This section is intended to advance the state's
209 interest in facilitating and accelerating citizens' access
210 to broadband via the electrical system, on and over which
211 broadband infrastructure such as fiber optic cable,
212 facilities, and technologies is already deployed to enhance
213 the reliability, resilience, and security of the electrical
214 system, by reducing the litigation risks involved when such
215 broadband infrastructure is used for such purposes, while at
216 the same time protecting citizens' property rights.

13. To the extent the common law or statutes prohibit
the condemnation of property of a provider of public utility
service or of a railroad corporation that is being put to
public use, nothing in this section shall abrogate or
eliminate those prohibitions. Further, nothing in this
section shall abrogate or eliminate any obligation of an
electrical corporation, a rural electrical cooperative
operating under chapter 394, or a municipally owned or
operated electric utility operating under chapter 91, the
scope of whose easement rights are permanently expanded as
described in subsection 9 of this section, to comply with
safety or permitting laws, regulations, existing contracts,
or standards required by the provider of the public utility
service or railroad corporation across whose property such
expanded easement rights are obtained.

523.010. 1. In case land, or other property, is
2 sought to be appropriated by any road, railroad, street
3 railway, telephone, telegraph or any electrical corporation
4 organized for the manufacture, **distribution**, or transmission
5 of electric current for light, heat, [or] power, **or by any**

6 **electrical corporation for the provision of broadband**
7 **infrastructure services**, including the construction, when
8 that is the case, of necessary dams and appurtenant canals,
9 flumes, tunnels and tailraces and including the erection,
10 when that is the case, of necessary electric steam
11 powerhouses, hydroelectric powerhouses and electric
12 substations or any oil, pipeline or gas corporation engaged
13 in the business of transporting or carrying oil, liquid
14 fertilizer solutions, or gas by means of pipes or pipelines
15 laid underneath the surface of the ground, or other
16 corporation created under the laws of this state for public
17 use, and such corporation and the owners cannot agree upon
18 the proper compensation to be paid, or in the case the owner
19 is incapable of contracting, be unknown, or be a nonresident
20 of the state, such corporation may apply to the circuit
21 court of the county of this state where such land or any
22 part thereof lies by petition setting forth the general
23 directions in which it is desired to construct its road,
24 railroad, street railway, telephone, or telegraph line or
25 electric line, including, when that is the case, the
26 construction and maintenance of necessary dams and
27 appurtenant canals, tunnels, flumes and tailraces and, when
28 that is the case, the appropriation of land submerged by the
29 construction of such dam, and including the erection and
30 maintenance, when that is the case, of necessary electric
31 steam powerhouses, hydroelectric powerhouses and electric
32 substations, or oil, pipeline, liquid fertilizer solution
33 pipeline, or gas line over or underneath the surface of such
34 lands, a description of the real estate, or other property,
35 which the company seeks to acquire; the names of the owners
36 thereof, if known; or if unknown, a pertinent description of
37 the property whose owners are unknown and praying the

38 appointment of three disinterested residents of the county,
39 as commissioners, or a jury, to assess the damages which
40 such owners may severally sustain in consequence of the
41 establishment, erection and maintenance of such road,
42 railroad, street railway, telephone, telegraph line, [or]
43 electrical line, **or electrical corporation broadband**
44 **infrastructure** including damages from the construction and
45 maintenance of necessary dams and the condemnation of land
46 submerged thereby, and the construction and maintenance of
47 appurtenant canals, flumes, tunnels and tailraces and the
48 erection and maintenance of necessary electric steam
49 powerhouses, hydroelectric powerhouses and electric
50 substations, or oil, pipeline, or gas line over or
51 underneath the surface of such lands; to which petition the
52 owners of any or all as the plaintiff may elect of such
53 parcels as lie within the county or circuit may be made
54 parties defendant by names if the names are known, and by
55 the description of the unknown owners of the land therein
56 described if their names are unknown.

57 2. If the proceedings seek to affect the lands of
58 persons under conservatorship, the conservators must be made
59 parties defendant. If the present owner of any land to be
60 affected has less estate than a fee, the person having the
61 next vested estate in remainder may at the option of the
62 petitioners be made party defendant; but if such
63 remaindermen are not made parties, their interest shall not
64 be bound by the proceedings.

65 3. It shall not be necessary to make any persons party
66 defendants in respect to their ownership unless they are
67 either in actual possession of the premises to be affected
68 claiming title or having a title of the premises appearing
69 of record upon the proper records of the county.

70 4. Except as provided in subsection 5 of this section,
71 nothing in this chapter shall be construed to give a public
72 utility, as defined in section 386.020, or a rural electric
73 cooperative, as provided in chapter 394, the power to
74 condemn property which is currently used by another provider
75 of public utility service, including a municipality or a
76 special purpose district, when such property is used or
77 useful in providing utility services, if the public utility
78 or cooperative seeking to condemn such property, directly or
79 indirectly, will use or proposes to use the property for the
80 same purpose, or a purpose substantially similar to the
81 purpose for which the property is being used by the provider
82 of the public utility service.

83 5. A public utility or a rural electric cooperative
84 may only condemn the property of another provider of public
85 utility service, even if the property is used or useful in
86 providing utility services by such provider, if the
87 condemnation is necessary for the public purpose of
88 acquiring a nonexclusive easement or right-of-way across the
89 property of such provider and only if the acquisition will
90 not materially impair or interfere with the current use of
91 such property by the utility or cooperative and will not
92 prevent or materially impair such provider of public utility
93 service from any future expansion of its facilities on such
94 property.

95 6. If a public utility or rural electric cooperative
96 seeks to condemn the property of another provider of public
97 utility service, and the conditions in subsection 4 of this
98 section do not apply, this section does not limit the
99 condemnation powers otherwise possessed by such public
100 utility or rural electric cooperative.

101 7. Suits in inverse condemnation or involving
102 dangerous conditions of public property against a municipal
103 corporation established under Article VI, Section 30(a) of
104 the Missouri Constitution shall be brought only in the
105 county where such land or any part thereof lies.

106 8. For purposes of this chapter, the authority for an
107 electrical corporation as defined in section 386.020, except
108 for an electrical corporation operating under a cooperative
109 business plan as described in section 393.110, to condemn
110 property for purposes of constructing an electric plant
111 subject to a certificate of public convenience and necessity
112 under subsection 1 of section 393.170 shall not extend to
113 the construction of a merchant transmission line with
114 Federal Energy Regulatory Commission negotiated rate
115 authority unless such line has a substation or converter
116 station located in Missouri which is capable of delivering
117 an amount of its electrical capacity to electrical customers
118 in this state that is greater than or equal to the
119 proportionate number of miles of the line that passes
120 through the state. The provisions of this subsection shall
121 not apply to applications filed pursuant to section 393.170
122 prior to August 28, 2022.

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