

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R. _____**

To amend the Communications Act of 1934 to streamline the deployment of telecommunications or broadband service facilities in the public rights-of-way and the rights-of-way of railroad carriers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. JOYCE of Pennsylvania introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Communications Act of 1934 to streamline the deployment of telecommunications or broadband service facilities in the public rights-of-way and the rights-of-way of railroad carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Broadband and Tele-
5 communications RAIL Act”.

1 **SEC. 2. DEPLOYMENT OF TELECOMMUNICATIONS OR**
2 **BROADBAND SERVICE FACILITIES IN PUBLIC**
3 **RIGHTS-OF-WAY AND RAILROAD RIGHTS-OF-**
4 **WAY.**

5 Title VII of the Communications Act of 1934 (47
6 U.S.C. 601 et seq.) is amended by adding at the end the
7 following:

8 **“SEC. 723. DEPLOYMENT OF TELECOMMUNICATIONS OR**
9 **BROADBAND SERVICE FACILITIES IN PUBLIC**
10 **RIGHTS-OF-WAY AND RAILROAD RIGHTS-OF-**
11 **WAY.**

12 **“(a) NOTIFICATION OF WORK BY PROVIDERS IN**
13 **PUBLIC RIGHTS-OF-WAY.—**

14 **“(1) IN GENERAL.—**If a State or local govern-
15 ment has authorized a provider to place or modify
16 telecommunications or broadband service facilities in
17 a public right-of-way, and the facilities will be placed
18 or modified in an area where the public right-of-way
19 intersects with a railroad corridor, the provider—

20 **“(A) shall submit to the relevant railroad**
21 **carrier a written notification that the placement**
22 **or modification has been authorized by the**
23 **State or local government; and**

24 **“(B) is not required to submit an applica-**
25 **tion to the railroad carrier under subsection (b)**
26 **with respect to the placement or modification.**

1 “(2) CONTENTS.—A notification submitted
2 under paragraph (1) shall contain the following in-
3 formation with respect to the placement or modifica-
4 tion described in such paragraph:

5 “(A) The location of the placement or
6 modification.

7 “(B) The proposed date of commencement
8 of work with respect to the placement or modi-
9 fication.

10 “(C) The anticipated duration of the work.

11 “(D) The entry and exit points that will be
12 used with respect to the performance of the
13 work.

14 “(E) The contact information of the pro-
15 vider.

16 “(3) SCHEDULING.—Following the submission
17 of a notification under paragraph (1)—

18 “(A) the provider shall schedule a date in
19 coordination with the railroad carrier for the
20 placement or modification of the facilities to
21 which the notification applies; and

22 “(B) the placement or modification de-
23 scribed in subparagraph (A) shall commence—

1 “(i) not earlier than the date that is
2 15 days after the date on which the notifi-
3 cation is submitted; and

4 “(ii) not later than—

5 “(I) the date that is 30 days
6 after the date on which the notifica-
7 tion is submitted; or

8 “(II) such other date as mutually
9 agreed upon by the provider and the
10 railroad carrier.

11 “(4) PAYMENT NOT REQUIRED.—

12 “(A) IN GENERAL.—A provider is not re-
13 quired to pay a railroad carrier with respect to
14 the placement or modification of telecommuni-
15 cations or broadband service facilities in a pub-
16 lic right-of-way as authorized by a State or
17 local government.

18 “(B) RULE OF CONSTRUCTION.—Nothing
19 in subparagraph (A) may be construed to affect
20 any requirement, pursuant to an authorization
21 by a State or local government for a provider
22 to place or modify telecommunications or
23 broadband service facilities in a public right-of-
24 way, for the provider to make any payment to

1 any entity with respect to the placement or
2 modification.

3 “(b) APPLICATION TO PLACE OR MODIFY TELE-
4 COMMUNICATIONS OR BROADBAND SERVICE FACILITIES
5 IN RAILROAD RIGHTS-OF-WAY.—

6 “(1) IN GENERAL.—In order to place or modify
7 telecommunications or broadband service facilities in
8 the right-of-way of a railroad carrier, a provider
9 shall submit to the railroad carrier a written applica-
10 tion that contains the following information:

11 “(A) Engineering design plans, construc-
12 tion plans, and (if applicable) bore plans with
13 respect to the placement or modification.

14 “(B) The location of the placement or
15 modification.

16 “(C) The proposed date of commencement
17 of work with respect to the placement or modi-
18 fication.

19 “(D) The anticipated duration of the work.

20 “(E) The entry and exit points that will be
21 used with respect to the performance of the
22 work.

23 “(F) The contact information of the pro-
24 vider.

25 “(2) DECISION.—

1 “(A) IN GENERAL.—Not later than 60
2 days after the date on which a railroad carrier
3 receives an application that contains the infor-
4 mation required by paragraph (1), the railroad
5 carrier shall—

6 “(i) approve or deny the application;
7 and

8 “(ii) transmit to the provider that
9 submitted the application a notification of
10 the approval or denial under clause (i).

11 “(B) EXCLUSIVE REASONS FOR DENIAL.—
12 A railroad carrier may only deny an application
13 under subparagraph (A) if the placement or
14 modification of telecommunications or
15 broadband service facilities proposed in the ap-
16 plication would—

17 “(i) substantially interfere with or
18 damage the infrastructure of the railroad
19 carrier; or

20 “(ii) jeopardize the safety of pas-
21 sengers or employees of the railroad car-
22 rier.

23 “(C) EXPLANATION.—If a railroad carrier
24 denies an application under subparagraph (A),
25 the railroad carrier shall include in the notifica-

1 tion required by clause (ii) of such subpara-
2 graph an identification of each reason described
3 in subparagraph (B) for which the railroad car-
4 rier denied the application and an explanation
5 of how such reason for denial applies to the ap-
6 plication.

7 “(3) SCHEDULING.—Following approval of an
8 application under this subsection, the provider shall
9 schedule a date in coordination with the railroad
10 carrier for the placement or modification of the fa-
11 cilities, which placement or modification shall com-
12 mence not later than—

13 “(A) the date that is 30 days after the
14 date of the approval; or

15 “(B) such other date as indicated in the
16 application or mutually agreed upon by the pro-
17 vider and the railroad carrier.

18 “(4) COMPENSATION.—A provider that submits
19 to a railroad carrier an application under this sub-
20 section shall pay the railroad carrier compensation
21 that is equal to the actual costs reasonably and di-
22 rectly incurred by the railroad carrier with respect
23 to the application (including any placement or modi-
24 fication of telecommunications or broadband service

1 facilities carried out pursuant to the application, to
2 the extent such costs relate to railroad safety).

3 “(c) PETITION FOR RELIEF.—

4 “(1) IN GENERAL.—

5 “(A) RAILROAD CARRIER.—A railroad car-
6 rier may petition the Commission for relief re-
7 garding the placement or modification by a pro-
8 vider of telecommunications or broadband serv-
9 ice facilities in an area where a public right-of-
10 way intersects with a railroad corridor, or in
11 the right-of-way of the railroad carrier, if the
12 railroad carrier asserts that—

13 “(i) in the case of a placement or
14 modification with respect to which the pro-
15 vider has submitted an application to the
16 railroad carrier under subsection (b), the
17 amount of compensation that the provider
18 proposes to pay under paragraph (4) of
19 such subsection is not actual costs as re-
20 quired by such paragraph; or

21 “(ii) the provider has otherwise failed
22 to comply with this section or a regulation
23 promulgated under this section.

24 “(B) PROVIDER.—

1 “(i) IN GENERAL.—A provider may
2 petition the Commission for relief regard-
3 ing the placement or modification by the
4 provider of telecommunications or
5 broadband service facilities in an area
6 where a public right-of-way intersects with
7 a railroad corridor, or in the right-of-way
8 of a railroad carrier, if the provider asserts
9 that the relevant railroad carrier has—

10 “(I) wrongfully obstructed or de-
11 layed the placement or modification;

12 “(II) requested payment above
13 actual costs required by subsection
14 (b)(4); or

15 “(III) otherwise failed to comply
16 with this section or a regulation pro-
17 mulgated under this section.

18 “(ii) TIMING.—In the case of a place-
19 ment or modification with respect to which
20 a provider has submitted an application to
21 a railroad carrier under subsection (b), the
22 provider may not file a petition for relief
23 under clause (i) with respect to the place-
24 ment or modification before the earlier
25 of—

1 “(I) the date on which the rail-
2 road carrier notifies the provider of
3 the approval or denial of the applica-
4 tion; and

5 “(II) the day after the date that
6 is 60 days after the date on which the
7 railroad carrier receives the applica-
8 tion.

9 “(2) ADJUDICATION.—

10 “(A) JURISDICTION.—The Commission
11 shall be the sole Federal agency with jurisdic-
12 tion to hear and resolve a petition filed under
13 paragraph (1).

14 “(B) FINDINGS.—In adjudicating a peti-
15 tion filed under paragraph (1), the Commission
16 may make any necessary findings of fact or de-
17 terminations.

18 “(C) USE OF EXPERTS.—

19 “(i) IN GENERAL.—In adjudicating a
20 petition filed under paragraph (1), the
21 Commission may employ experts to advise
22 the Commission with respect to—

23 “(I) examining locations, plans,
24 specifications, and descriptions of

1 equipment and methods proposed to
2 be employed;

3 “(II) hearing any objections and
4 considering any modifications that the
5 railroad carrier or provider submits;

6 “(III) rejecting, approving, or
7 modifying proposed plans and speci-
8 fications; and

9 “(IV) technical, economic, and
10 other matters concerning the place-
11 ment or modification.

12 “(ii) REIMBURSEMENT.—The party
13 against which the Commission rules on an
14 issue with respect to which an expert em-
15 ployed by the Commission under clause (i)
16 renders services under such clause shall re-
17 imburse the Commission for the cost of
18 such services.

19 “(iii) DEPOSIT OF COLLECTIONS.—
20 Amounts received to reimburse the Com-
21 mission for the cost of services rendered by
22 an expert employed under clause (i) shall
23 be deposited in, and credited to, the ac-
24 count through which funds were made
25 available to pay such cost.

1 “(iv) AUTHORITY.—The Commission
2 may employ experts under clause (i) pursu-
3 ant to section 3109(b) of title 5, United
4 States Code.

5 “(D) COORDINATION WITH FEDERAL
6 AGENCIES.—In adjudicating a petition filed
7 under paragraph (1), the Commission shall co-
8 ordinate with the Administrator of the Federal
9 Railroad Administration and the Surface
10 Transportation Board regarding any finding of
11 fact or determination relating to railroad safety.

12 “(E) FINAL ORDER.—

13 “(i) IN GENERAL.—Not later than 90
14 days after the date on which a petition is
15 filed under paragraph (1), the Commission
16 shall issue a final order regarding the peti-
17 tion in which the Commission may grant
18 such relief as the Commission considers
19 appropriate.

20 “(ii) EXTENSION OF DEADLINE.—

21 “(I) IN GENERAL.—Except as
22 provided in subclause (II), the Com-
23 mission may extend the deadline with
24 respect to a petition under clause (i),

1 as the Commission considers appro-
2 priate.

3 “(II) EXCEPTION.—The Commis-
4 sion may not extend the deadline with
5 respect to a petition under clause (i)
6 on the basis of the coordination re-
7 quired by subparagraph (D).

8 “(d) RESPONSIBILITIES OF PARTIES.—

9 “(1) RAILROAD CARRIERS.—With respect to the
10 placement or modification by a provider of tele-
11 communications or broadband service facilities in an
12 area where a public right-of-way intersects with a
13 railroad corridor, or in the right-of-way of a railroad
14 carrier, the relevant railroad carrier shall—

15 “(A) take such protective measures as the
16 railroad carrier determines necessary and ap-
17 propriate; and

18 “(B) perform any work necessary to imple-
19 ment the placement or modification that the
20 provider is prohibited from performing because
21 of the limitations specified under subsection
22 (e)(2)(D).

23 “(2) PROVIDERS.—With respect to the place-
24 ment or modification by a provider of telecommuni-
25 cations or broadband service facilities in an area

1 where a public right-of-way intersects with a railroad
2 corridor, or in the right-of-way of a railroad carrier,
3 the provider—

4 “(A) is not required to obtain additional
5 insurance for the placement or modification;
6 and

7 “(B) shall—

8 “(i) carry out all aspects of the imple-
9 mentation of the placement or modification
10 (other than any work necessary to imple-
11 ment the placement or modification that
12 the provider is prohibited from performing
13 because of the limitations specified under
14 subsection (e)(2)(D)); and

15 “(ii) ensure that the facilities are con-
16 structed and operated in accordance
17 with—

18 “(I) all applicable Federal laws
19 and regulations, including those relat-
20 ing to railroad safety; and

21 “(II) any accepted industry
22 standards specified by the Commis-
23 sion.

24 “(e) RULEMAKING.—

1 “(1) IN GENERAL.—Not later than 1 year after
2 the date of the enactment of this section, the Com-
3 mission shall promulgate regulations (which may in-
4 clude regulations applicable to railroad carriers) to
5 implement this section in a manner that—

6 “(A) ensures railroad safety, including by
7 ensuring compliance with all applicable Federal
8 laws and regulations, including those relating to
9 railroad safety;

10 “(B) provides a process for more timely
11 placement or modification of telecommuni-
12 cations or broadband service facilities in emer-
13 gency situations than would otherwise be pro-
14 vided for under this section;

15 “(C) prevents substantial interference with
16 the infrastructure or operations of railroad car-
17 riers;

18 “(D) allows for the timely and efficient
19 placement and modification of telecommuni-
20 cations or broadband service facilities; and

21 “(E) provides a process for more timely
22 placement or modification of telecommuni-
23 cations or broadband service facilities in rail-
24 road carrier crossings that are closed or aban-

1 doned than would otherwise be provided for
2 under this section.

3 “(2) MATTERS TO BE INCLUDED.—In the regu-
4 lations promulgated under paragraph (1), the Com-
5 mission shall—

6 “(A) establish standards and procedures
7 for determining whether the reasons for denial
8 under clauses (i) and (ii) of subsection
9 (b)(2)(B) are met;

10 “(B) establish standards and procedures
11 for determining actual costs under subsection
12 (b)(4);

13 “(C) establish standards and procedures
14 for adjudicating petitions for relief under sub-
15 section (c), including with respect to reimburse-
16 ment of the Commission for the cost of services
17 rendered by experts employed under subsection
18 (c)(2)(C);

19 “(D) specify any limitations on the loca-
20 tions within an area where a public right-of-way
21 intersects with a railroad corridor, or within the
22 right-of-way of a railroad carrier, where a pro-
23 vider may perform work relating to the place-
24 ment or modification of telecommunications or
25 broadband service facilities, or on the types of

1 such work that a provider may perform within
2 such an area or right-of-way, in order to ensure
3 railroad safety and to prevent substantial inter-
4 ference with the infrastructure or operations of
5 railroad carriers; and

6 “(E) otherwise establish standards and
7 procedures and define terms as necessary to im-
8 plement this section.

9 “(3) COORDINATION WITH FEDERAL AGEN-
10 CIES.—In promulgating regulations under paragraph
11 (1), the Commission shall coordinate with the Ad-
12 ministrators of the Federal Railroad Administration
13 and the Surface Transportation Board regarding
14 any matter relating to railroad safety.

15 “(f) DEFINITIONS.—In this section:

16 “(1) BROADBAND SERVICE.—The term
17 ‘broadband service’ has the meaning given the term
18 ‘broadband internet access service’ in section 8.1(b)
19 of title 47, Code of Federal Regulations (or any suc-
20 cessor regulation).

21 “(2) PROVIDER.—The term ‘provider’ means a
22 provider of telecommunications service or broadband
23 service.

1 “(3) RAILROAD CARRIER.—The term ‘railroad
2 carrier’ has the meaning given such term in section
3 20102 of title 49, United States Code.

4 “(4) TELECOMMUNICATIONS OR BROADBAND
5 SERVICE FACILITIES.—The term ‘telecommuni-
6 cations or broadband service facilities’—

7 “(A) means facilities used to provide or
8 support the provision of any telecommuni-
9 cations service or broadband service; and

10 “(B) includes facilities described in sub-
11 paragraph (A) that are used to provide or sup-
12 port the provision of other services.”.