

1 ENGROSSED HOUSE  
2 BILL NO. 1965

By: Newton and Fetgatter of the  
House

3 and

4 Howard of the Senate  
5  
6

7 An Act relating to easements; defining terms;  
8 providing for use of certain easements for broadband  
9 service; prohibiting class action lawsuits against  
10 certain entities based on trespass or inverse  
11 condemnation; providing for permanent nature of  
12 trespass, nuisance or inverse condemnation;  
13 prescribing measure of damages; prohibiting admission  
14 of certain evidence for purposes of determining fair  
15 market value; providing for permanent easement based  
16 upon payment of damages; authorizing Approved  
17 Broadband Providers to use certain above ground  
18 easements for certain purposes; prohibiting class  
19 action lawsuit provisions with respect to certain  
20 lawsuits; providing for determination of permanency  
21 with respect to certain actions; providing method for  
22 computation of damages; prohibiting admission of  
23 certain evidence for determining fair market value;  
24 providing for computation of damages; providing for  
grant of permanent easement upon payment of damages;  
making legislative findings regarding easements;  
providing for permitted use as a matter of law;  
providing for use of certain electric easements for  
broadband services; providing for codification; and  
providing an effective date.

21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 139.301 of Title 17, unless  
24 there is created a duplication in numbering, reads as follows:

1 As used in this act:

2 1. "Approved Broadband Provider" shall mean a provider of  
3 Broadband Services, including subsidiaries or affiliates, with a  
4 valid pole attachment agreement with an Electric Provider to which  
5 it is attaching;

6 2. "Broadband Services" shall mean and include fiber, cable and  
7 telecommunications networks, including wireless networks capable of  
8 delivering broadband;

9 3. "Electric Provider", as used in Sections 2 and 3 of this  
10 act, shall mean any corporation, association or cooperative  
11 corporation engaged in the generation, transmission or distribution  
12 of electric service in this state; and

13 4. "Telecommunications Provider" shall mean any corporation,  
14 association or cooperative corporation engaged in the delivery of  
15 telecommunications over wireline facilities in this state.

16 SECTION 2. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 139.302 of Title 17, unless  
18 there is created a duplication in numbering, reads as follows:

19 A. Any easement owned, held or otherwise used by an Electric  
20 Provider for the purpose of electric services may also be used by  
21 that Electric Provider or its broadband subsidiary,  
22 Telecommunications Provider or other Approved Broadband Provider,  
23 for the purpose of supplying Broadband Services.  
24

1 B. Notwithstanding the provisions of Section 2023 of Title 12  
2 of the Oklahoma Statutes, a class action lawsuit may not be  
3 maintained against an Electric Provider or its broadband subsidiary  
4 in a suit for trespass, nuisance or inverse condemnation based on a  
5 claim of expanded use of an easement where the broadband facilities  
6 are located on an easement owned, held or otherwise used by an  
7 Electric Provider. In a suit of trespass, nuisance or inverse  
8 condemnation against an Electric Provider or its broadband  
9 subsidiary, based on a claim of expanded use of an easement, any  
10 trespass, nuisance or condemnation found to exist shall be deemed  
11 permanent and the actual damages awarded shall be the fair market  
12 value which, notwithstanding any other provision of law, shall  
13 always be greater than zero (0), but shall not exceed the difference  
14 between the fair market value of the property owner's entire  
15 property immediately before the taking and the fair market value of  
16 the property owner's property immediately after the taking. In such  
17 a suit, evidence of revenues or profits derived, or the rental value  
18 of use of the attached broadband facilities, shall not be admissible  
19 in determining fair market value. A property owner's actual damages  
20 shall be fixed at the time of the initial broadband installation and  
21 shall not be deemed to continue, accumulate or accrue. Upon payment  
22 of damages, the Electric Provider and/or its broadband subsidiary  
23 and/or the Telecommunications Provider and/or Approved Broadband  
24

1 Provider shall be granted a permanent easement for the use,  
2 replacement, and maintenance of the facilities installed.

3 C. An Approved Broadband Provider with a valid pole attachment  
4 agreement with the Electric Provider to which it is attaching may  
5 use the Electric Provider's above ground easement for the purpose of  
6 providing Broadband Services. Notwithstanding the provisions of  
7 Section 2023 of Title 12 of the Oklahoma Statutes, a class action  
8 lawsuit may not be maintained against an Approved Broadband  
9 Provider, Electric Provider, its broadband subsidiary, or  
10 Telecommunications Provider in a suit for trespass, nuisance or  
11 inverse condemnation based on a claim of expanded use of an easement  
12 where the broadband facilities are located on above ground  
13 infrastructure owned, held or otherwise used by an Electric  
14 Provider. In a suit for trespass, nuisance or inverse condemnation  
15 against an Approved Broadband Provider, Electric Provider, its  
16 broadband subsidiary, or Telecommunications Provider, based on a  
17 claim of expanded use of an above ground easement by the Electric  
18 Provider or Approved Broadband Provider, any trespass, nuisance or  
19 condemnation found to exist shall be deemed permanent and the actual  
20 damages awarded shall be the fair market value which,  
21 notwithstanding any other provision of law, shall always be greater  
22 than zero (0), but shall not exceed the difference between the fair  
23 market value of the property owner's entire property immediately  
24 before the taking and the fair market value of the property owner's

1 property immediately after the taking. In such a suit, evidence of  
2 revenues or profits derived, or the rental value of use of the  
3 attached broadband facilities, shall not be admissible in  
4 determining fair market value. A property owner's actual damages  
5 shall be fixed at the time of the initial broadband installation and  
6 shall not be deemed to continue, accumulate or accrue. Upon payment  
7 of damages, the Approved Broadband Provider, Electric Provider, its  
8 broadband subsidiary, or Telecommunications Provider shall be  
9 granted a permanent easement for the use, replacement and  
10 maintenance of the facilities installed.

11 SECTION 3. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 139.303 of Title 17, unless  
13 there is created a duplication in numbering, reads as follows:

14 The Oklahoma Legislature finds that Electric Providers, their  
15 broadband subsidiaries, Telecommunications Providers and Approved  
16 Broadband Providers shall be permitted to use existing electric  
17 utility easements owned, held or otherwise used by that Electric  
18 Provider to provide or expand access to Broadband Services. The  
19 installation and operation of Broadband Services within the existing  
20 electric utility easements are merely changes in the manner or  
21 degree of the granted use as appropriate to accommodate a new  
22 technology and, absent any applicable express prohibition contained  
23 in the instrument conveying or granting such easements, shall be  
24 deemed as a matter of law to be a permitted use within the scope of

