

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 23-0657.01 Nicole Myers x4326

SENATE BILL 23-183

SENATE SPONSORSHIP

Priola and Baisley, Bridges, Cutter, Fenberg, Hinrichsen, Roberts, Winter F.

HOUSE SPONSORSHIP

Titone and Weinberg, Parenti, Story

Senate Committees

Local Government & Housing

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE ELIMINATION OF THE REQUIREMENT THAT A LOCAL**
102 **GOVERNMENT OBTAIN VOTER APPROVAL TO PROVIDE CERTAIN**
103 **COMMUNICATIONS SERVICES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Joint Technology Committee. Current law regulates competition in local governments' provision of cable television service, telecommunications service, and high speed internet service, which is defined as "advanced service". As part of this regulation, a local government is prohibited from providing or operating a facility to provide

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

cable television, telecommunications, or advanced service to subscribers unless the local government obtains voter approval for the local government's provision of such services. The bill:

- Replaces the term "advanced service" with "broadband internet service", which, as currently defined, does not reference the speed at which internet services are provided;
- Eliminates the requirement that a local government hold an election before providing or before operating a facility to provide cable television, telecommunications, or broadband internet services to subscribers;
- Eliminates the requirement that a local government hold an election to enter into a private partnership to allow a private provider to use local government facilities in connection with the private provider offering cable television service, telecommunications service, broadband internet service, or middle mile infrastructure.
- Specifies that a local government may provide middle mile infrastructure, which is broadband infrastructure that does not connect directly to an end-user location; and
- Modifies the definition of "broadband internet service" as currently defined in the law concerning intrastate telecommunications services.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 29-27-101 as
3 follows:

4 **29-27-101. Legislative declaration.** (1) The general assembly
5 hereby finds and declares that it is the policy of ~~this~~ THE state to ensure
6 that cable television service, telecommunications service, ~~and high-speed~~
7 ~~internet access, otherwise known as advanced~~ BROADBAND INTERNET
8 service, AND MIDDLE MILE INFRASTRUCTURE, are each provided within a
9 consistent, comprehensive, and nondiscriminatory federal, state, and local
10 government framework.

11 (2) The general assembly further finds and declares that:

12 (a) There is a need for statewide uniformity in the regulation of all
13 public and private entities that provide cable television service,

1 telecommunications service, ~~and advanced~~ BROADBAND INTERNET
2 service, AND MIDDLE MILE INFRASTRUCTURE.

3 (b) Municipal ordinances, rules, and other regulations governing
4 the provision of cable television service, telecommunications service, ~~and~~
5 ~~advanced~~ BROADBAND INTERNET service, AND MIDDLE MILE
6 INFRASTRUCTURE by a local government impact persons living outside the
7 municipality.

8 (c) Regulating the provision of cable television service,
9 telecommunications service, ~~and advanced~~ BROADBAND INTERNET
10 service, AND MIDDLE MILE INFRASTRUCTURE by a local government is a
11 matter of statewide concern.

12 **SECTION 2.** In Colorado Revised Statutes, 29-27-102, **amend**
13 (4) and (5); **repeal** (1); and **add** (1.5) and (3.5) as follows:

14 **29-27-102. Definitions.** As used in this article, unless the context
15 otherwise requires:

16 (1) ~~"Advanced service" means high-speed internet access~~
17 ~~capability in excess of two hundred fifty-six kilobits per second both~~
18 ~~upstream and downstream.~~

19 (1.5) "BROADBAND INTERNET SERVICE" HAS THE SAME MEANING
20 AS SET FORTH IN SECTION 40-15-102 (3.5).

21 (3.5) "MIDDLE MILE INFRASTRUCTURE" HAS THE SAME MEANING
22 AS SET FORTH IN 47 U.S.C. SEC. 1741 (a)(9).

23 (4) "Private provider" means a private entity that provides cable
24 television service, telecommunications service, ~~or advanced~~ BROADBAND
25 INTERNET service, OR MIDDLE MILE INFRASTRUCTURE.

26 (5) "Subscriber" means a person that lawfully receives cable
27 television service, telecommunications service, ~~or advanced~~ BROADBAND

1 INTERNET service, ~~A person that utilizes cable television service,~~
2 ~~telecommunications service, or advanced service provided by a local~~
3 ~~government for local governmental or intergovernmental purposes and is~~
4 ~~used by persons accessing government services is not a subscriber for~~
5 ~~purposes of this article~~ OR MIDDLE MILE INFRASTRUCTURE.

6 **SECTION 3.** In Colorado Revised Statutes, 29-27-103, **amend**
7 (2) introductory portion, (2)(c), and (2)(d); and **repeal** (1) and (3) as
8 follows:

9 **29-27-103. Provision of cable television, telecommunications,**
10 **and broadband internet services or middle mile infrastructure.**

11 (1) ~~Except as provided in this article, a local government shall not:~~

12 (a) ~~Provide to one or more subscribers cable television service,~~
13 ~~telecommunications service, or advanced service; or~~

14 (b) ~~Purchase, lease, construct, maintain, or operate any facility for~~
15 ~~the purpose of providing cable television service, telecommunications~~
16 ~~service, or advanced service to one or more subscribers.~~

17 (2) A LOCAL GOVERNMENT MAY PROVIDE CABLE TELEVISION
18 SERVICE, TELECOMMUNICATIONS SERVICE, BROADBAND INTERNET
19 SERVICE, OR MIDDLE MILE INFRASTRUCTURE, SUBJECT TO THE
20 REQUIREMENTS OF THIS ARTICLE 27. For purposes of this ~~article~~ ARTICLE
21 27, a local government provides cable television service,
22 telecommunications service, ~~or advanced~~ BROADBAND INTERNET service,
23 OR MIDDLE MILE INFRASTRUCTURE if the local government provides the
24 cable television service, telecommunications service, ~~or advanced~~
25 BROADBAND INTERNET service, ~~to one or more subscribers~~ OR MIDDLE
26 MILE INFRASTRUCTURE:

27 (c) By contract, including a contract whereby the local

1 government leases, sells capacity in, or grants other similar rights to a
2 private provider to use local governmental facilities designed or
3 constructed to provide cable television service, telecommunications
4 service, ~~or advanced~~ BROADBAND INTERNET service, OR MIDDLE MILE
5 INFRASTRUCTURE for internal local government purposes in connection
6 with a private provider's offering of cable television service,
7 telecommunications service, ~~or advanced~~ BROADBAND INTERNET service,
8 OR MIDDLE MILE INFRASTRUCTURE; or

9 (d) Through THE sale or purchase of resale or wholesale cable
10 television service, telecommunications service, ~~or advanced~~ BROADBAND
11 INTERNET service, OR MIDDLE MILE INFRASTRUCTURE for the purpose of
12 providing cable television service, telecommunications service, ~~or~~
13 ~~advanced~~ BROADBAND INTERNET service, ~~to one or more subscribers~~ OR
14 MIDDLE MILE INFRASTRUCTURE.

15 (3) ~~Nothing in this article shall be construed to limit the authority~~
16 ~~of a local government to lease to a private provider physical space in or~~
17 ~~on its property for the placement of equipment or facilities the private~~
18 ~~provider uses to provide cable television, telecommunications, or~~
19 ~~advanced services.~~

20 **SECTION 4.** In Colorado Revised Statutes, **repeal** 29-27-201 as
21 follows:

22 **29-27-201. Vote - referendum.** ~~(1) Before a local government~~
23 ~~may engage or offer to engage in providing cable television service,~~
24 ~~telecommunications service, or advanced service, an election shall be~~
25 ~~called on whether or not the local government shall provide the proposed~~
26 ~~cable television service, telecommunications service, or advanced service.~~

27 ~~(2) The ballot at an election conducted pursuant to this section~~

1 shall pose the question as a single subject and shall include a description
2 of the nature of the proposed service, the role that the local government
3 will have in provision of the service, and the intended subscribers of such
4 service. The ballot proposition shall not take effect until submitted to the
5 electors and approved by the majority of those voting on the ballot.

6 **SECTION 5.** In Colorado Revised Statutes, **repeal** 29-27-202 as
7 follows:

8 **29-27-202. Exemption for unserved areas.** ~~(1) A local~~
9 ~~government shall be exempt from the requirements of this part 2 and may~~
10 ~~engage or offer to engage in providing cable television service,~~
11 ~~telecommunications service, or advanced service if:~~

12 ~~(a) No private provider of cable television service,~~
13 ~~telecommunications service, or advanced service provides the service~~
14 ~~anywhere within the boundaries of the local government;~~

15 ~~(b) The governing body of the local government has submitted a~~
16 ~~written request to provide the service to any incumbent provider of cable~~
17 ~~television service, telecommunications service, or advanced service~~
18 ~~within the boundaries of the local government; and~~

19 ~~(c) The incumbent provider has not agreed within sixty days of the~~
20 ~~receipt of a request submitted pursuant to paragraph (b) of this subsection~~
21 ~~(1) to provide the service or, if the provider has agreed, it has not~~
22 ~~commenced providing the service within fourteen months of the receipt~~
23 ~~of the request.~~

24 **SECTION 6.** In Colorado Revised Statutes, 29-27-301, **amend**
25 (1) and (2)(a) as follows:

26 **29-27-301. General operating limitations.** (1) A local
27 government that provides cable television service, telecommunications

1 service, ~~or advanced~~ BROADBAND INTERNET service, ~~under~~ OR MIDDLE
2 MILE INFRASTRUCTURE PURSUANT TO ~~this article~~ ARTICLE 27 shall comply
3 with all state and federal laws, rules, and regulations governing provision
4 of such service by a private provider; except that nothing herein ~~shall be~~
5 ~~construed to affect~~ AFFECTS the jurisdiction of the public utilities
6 commission with respect to municipal utilities.

7 (2) (a) A local government shall not make or grant any undue or
8 unreasonable preference or advantage to itself or to any private provider
9 of cable television services, telecommunications services, ~~or advanced~~
10 ~~services~~ BROADBAND INTERNET SERVICE, OR MIDDLE MILE
11 INFRASTRUCTURE.

12 **SECTION 7.** In Colorado Revised Statutes, **repeal** 29-27-302 as
13 follows:

14 **29-27-302. Scope of article.** ~~(1) Nothing in this article shall be~~
15 ~~construed to authorize any local government to:~~

16 ~~(a) Provide, directly or indirectly, cable television service,~~
17 ~~telecommunications service, or advanced service; or~~

18 ~~(b) Purchase, lease, construct, maintain, or operate a facility for~~
19 ~~the purpose of providing, directly or indirectly, cable television service,~~
20 ~~telecommunications service, or advanced service.~~

21 ~~(2) Nothing in this article shall be construed to apply to a local~~
22 ~~government purchasing, leasing, constructing, maintaining, or operating~~
23 ~~facilities that are designed to provide cable television service,~~
24 ~~telecommunications service, or advanced service that the local~~
25 ~~government uses for internal or intergovernmental purposes.~~

26 ~~(3) Nothing in this article shall be construed to apply to the sale~~
27 ~~or lease by a local government to private providers of excess capacity, if:~~

1 (a) Such excess capacity is insubstantial in relation to the capacity
2 utilized by the local government for its own purposes; and

3 (b) ~~The opportunity to purchase and the opportunity to use such~~
4 ~~excess capacity is made available to any private provider in a~~
5 ~~nondiscriminatory, nonexclusive, and competitively neutral manner.~~

6 (4) ~~Nothing in this article shall be construed to limit either the~~
7 ~~authority of the statewide internet portal authority created in section~~
8 ~~24-37.7-102, C.R.S., to carry out its mission or to integrate the electronic~~
9 ~~information delivery systems of local governments into the statewide~~
10 ~~internet portal as defined in article 37.7 of title 24, C.R.S.~~

11 (5) ~~Nothing in part 1 or part 2 of this article 27 shall be construed~~
12 ~~to apply to a school district or board of cooperative services, created~~
13 ~~pursuant to article 5 of title 22, purchasing, leasing, constructing,~~
14 ~~maintaining, or operating facilities that exclusively provide advanced~~
15 ~~service that enables students, teachers, and staff members of the district,~~
16 ~~the board of cooperative services, or the member districts of the board of~~
17 ~~cooperative services, to access a school-owned and operated network to~~
18 ~~facilitate remote learning.~~

19 **SECTION 8.** In Colorado Revised Statutes, **repeal** 29-27-304 as
20 follows:

21 **29-27-304. Applicability.** ~~This article shall apply to cable~~
22 ~~television service, telecommunications service, and advanced service and~~
23 ~~to the purchase, lease, construction, maintenance, or operation of any~~
24 ~~facility for the purpose of providing such service, for which a local~~
25 ~~government has not entered into an agreement or otherwise taken any~~
26 ~~substantial action prior to March 1, 2005, to provide such service or~~
27 ~~purchase, lease, construct, maintain, or operate such facilities.~~

1 **SECTION 9.** In Colorado Revised Statutes, 40-15-102, **amend**
2 (3.5) as follows:

3 **40-15-102. Definitions.** As used in this article 15, unless the
4 context otherwise requires:

5 (3.5) "Broadband internet service" means a retail service that
6 transmits and receives data from the customer's property or determined
7 point of presence to substantially all internet endpoints. The term includes
8 any capabilities that are incidental to and enable the operation of the
9 broadband INTERNET service.

10 **SECTION 10.** In Colorado Revised Statutes, 30-20-603, **amend**
11 (1)(a) and (1)(g)(II); **repeal** (1)(g)(III)(A); and **add** (1)(g)(III)(A.5) as
12 follows:

13 **30-20-603. Improvements and funding authorized - how**
14 **instituted - conditions - definitions.** (1) (a) A district may be formed in
15 accordance with the requirements of this part 6 for the purpose of
16 constructing, installing, acquiring, or funding, in whole or in part, any
17 public improvement, so long as the county that forms the district is
18 authorized to provide such improvement or provide for such funding
19 under the county's home rule charter, if any, or the laws of this state.
20 Public improvements or the funding thereof shall not include any facility
21 identified in section 30-20-101 (8) or (9). No such district shall provide
22 the same improvement as an existing special district within the territory
23 of such existing special district unless the existing special district
24 consents. The improvements authorized by this part 6 may consist,
25 without limitation, of constructing, grading, paving, pouring, curbing,
26 guttering, lining, or otherwise improving the whole or any part of any
27 street or providing street lighting, drainage facilities, or service

1 improvements, in the unincorporated area of a county or wholly or partly
2 within the boundaries of any municipality within the county if such
3 municipality consents by ordinance to such improvements. If
4 improvements within a municipality are so included in a county
5 improvement district by municipal consent, the county shall have full
6 authority to construct or acquire such improvements, to assess property
7 within such municipality benefited by such improvements, and to enforce
8 and collect such assessments, in the manner provided in this part 6. The
9 improvements authorized by this part 6 may include, without limitation,
10 the construction of sidewalks adjacent to any such streets or maintenance
11 roads adjacent to any such drainage facilities. Prior to the establishment
12 of any improvement district for the purpose of providing street lighting,
13 arrangements, by contract or otherwise, must be established under which
14 the owners of property included within such district shall be responsible
15 for the maintenance and operation of such street lighting improvement.
16 The costs of maintenance and operation of such street lighting
17 improvements shall not be paid from the county general fund. Drainage
18 facilities shall not be provided in any area which is within an existing
19 drainage district organized or created pursuant to law without the
20 approval of such district. The term "service" as used in this ~~paragraph (a)~~
21 SUBSECTION (1)(a) includes the services provided by a public utility as
22 defined in section 40-1-103, ~~C.R.S.~~, as well as ~~advanced~~ BROADBAND
23 INTERNET service as defined in ~~section 29-27-102 (1), C.R.S.~~ SECTION
24 40-15-102 (3.5), cable television service as defined in section 29-27-102
25 (2), ~~C.R.S.~~, telecommunications service as defined in section 40-15-102
26 (29), ~~C.R.S.~~, geothermal heat suppliers as defined in section 40-40-103,
27 ~~C.R.S.~~, and information service as defined in 47 U.S.C. sec. 153 (20), or

1 any successor section.

2 (g) (II) In compliance with the procedures set forth in subsection
3 (1)(g)(I) of this section, a rural county may establish a local improvement
4 district only in an unserved area to contract with a telecommunications
5 service provider or ~~an advanced~~ A BROADBAND INTERNET service provider
6 to fund the construction of ~~an advanced~~ BROADBAND INTERNET service
7 improvement.

8 (III) For purposes of this subsection (1)(g):

9 (A) ~~"Advanced service" has the same meaning as "broadband
10 service" as it is defined in section 40-15-102 (3.3).~~

11 (A.5) "BROADBAND INTERNET SERVICE" HAS THE SAME MEANING
12 AS SET FORTH IN SECTION 40-15-102 (3.5).

13 **SECTION 11. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, or safety.