

119TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

Mrs. BLACKBURN (for herself and Mr. LUJÁN) introduced the following bill;
which was read twice and 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 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) DEFINITIONS.—In this section:

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

18 “(2) PROVIDER.—The term ‘provider’ means a
19 provider of telecommunications service or broadband
20 service.

21 “(3) PUBLIC RIGHT-OF-WAY.—The term ‘public
22 right-of-way’ means a public street, highway, route,
23 or road (as designated by the Federal Government
24 or a State or local government), including—

25 “(A) any railroad installation listed in the
26 National Highway-Rail Crossing Inventory of

1 the Department of Transportation as an over
2 (at grade), under (subgrade), longitudinal (par-
3 allel), or transverse (crossing) installation; and

4 “(B) a private crossing with public access
5 listed in the National Highway-Rail Crossing
6 Inventory of the Department of Transportation.

7 “(4) RAILROAD CARRIER.—The term ‘railroad
8 carrier’ has the meaning given the term in section
9 20102 of title 49, United States Code.

10 “(5) TELECOMMUNICATIONS OR BROADBAND
11 SERVICE FACILITY.—The term ‘telecommunications
12 or broadband service facility’—

13 “(A) means a facility used to provide or
14 support the provision of any telecommuni-
15 cations service or broadband service; and

16 “(B) includes a facility described in sub-
17 paragraph (A) that is used to provide, or sup-
18 port the provision of, other services.

19 “(b) NOTIFICATION OF WORK BY PROVIDERS IN
20 PUBLIC RIGHTS-OF-WAY.—

21 “(1) IN GENERAL.—If a State or local govern-
22 ment has authorized a provider to place or modify
23 a telecommunications or broadband service facility in
24 a public right-of-way, and the telecommunications or
25 broadband service facility will be placed or modified

1 in an area where the public right-of-way intersects
2 with a railroad corridor, the provider—

3 “(A) shall submit to the applicable railroad
4 carrier a written notification that the placement
5 or modification has been authorized by the
6 State or local government; and

7 “(B) shall not be required to submit an
8 application to the railroad carrier under sub-
9 section (c) with respect to the placement or
10 modification.

11 “(2) CONTENTS.—A notification submitted
12 under paragraph (1) shall contain the following in-
13 formation with respect to a placement or modifica-
14 tion described in that paragraph:

15 “(A) The location of the placement or
16 modification.

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

20 “(C) The anticipated duration of the work
21 described in subparagraph (B).

22 “(D) The entry and exit points that will be
23 used with respect to the performance of the
24 work described in subparagraph (B).

1 “(E) The contact information of the pro-
2 vider.

3 “(3) SCHEDULING.—Following the submission
4 of a complete notification under paragraph (1) by a
5 provider—

6 “(A) the provider shall schedule a date in
7 coordination with the applicable railroad carrier
8 for the placement or modification of the tele-
9 communications or broadband service facility to
10 which the notification applies; and

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

13 “(i) not earlier than the date that is
14 15 days after the date on which the notifi-
15 cation is submitted; and

16 “(ii) not later than—

17 “(I) the date that is 30 days
18 after the date on which the notifica-
19 tion is submitted; or

20 “(II) such other date as mutually
21 agreed upon by the provider and the
22 applicable railroad carrier.

23 “(4) PAYMENT NOT REQUIRED.—

24 “(A) IN GENERAL.—A provider shall not
25 be required to pay a railroad carrier with re-

1 spect to the placement or modification of a tele-
2 communications or broadband service facility in
3 a public right-of-way, as authorized by a State
4 or local government.

5 “(B) RULE OF CONSTRUCTION.—Nothing
6 in subparagraph (A) may be construed to affect
7 any requirement, pursuant to an authorization
8 by a State or local government for a provider
9 to place or modify a telecommunications or
10 broadband service facility in a public right-of-
11 way, for the provider to make any payment to
12 any entity with respect to the placement or
13 modification.

14 “(c) APPLICATION TO PLACE OR MODIFY TELE-
15 COMMUNICATIONS OR BROADBAND SERVICE FACILITIES
16 IN RAILROAD RIGHTS-OF-WAY.—

17 “(1) IN GENERAL.—In order to place or modify
18 a telecommunications or broadband service facility in
19 the right-of-way of a railroad carrier, a provider
20 shall submit to the railroad carrier a written applica-
21 tion that contains the following information:

22 “(A) Engineering design plans, construc-
23 tion plans, and (if applicable) bore plans with
24 respect to the placement or modification.

1 “(B) The location of the placement or
2 modification.

3 “(C) The proposed date of commencement
4 of work with respect to the placement or modi-
5 fication.

6 “(D) The anticipated duration of the work
7 described in subparagraph (C).

8 “(E) The entry and exit points that will be
9 used with respect to the performance of the
10 work described in subparagraph (C).

11 “(F) The contact information of the pro-
12 vider.

13 “(2) DECISION.—

14 “(A) IN GENERAL.—Not later than 60
15 days after the date on which a railroad carrier
16 receives a complete application that contains
17 the information required under paragraph (1),
18 the railroad carrier shall—

19 “(i) approve or deny the application;
20 and

21 “(ii) transmit to the provider that
22 submitted the application a notification of
23 the approval or denial under clause (i).

24 “(B) EXCLUSIVE REASONS FOR DENIAL.—

25 A railroad carrier may only deny an application

1 under subparagraph (A) if the placement or
2 modification of a telecommunications or
3 broadband service facility proposed in the appli-
4 cation would—

5 “(i) substantially interfere with or
6 damage the infrastructure or permanent
7 operations of the railroad carrier; or

8 “(ii) jeopardize the safety of pas-
9 sengers or employees of the railroad car-
10 rier.

11 “(C) EXPLANATION.—If a railroad carrier
12 denies an application under subparagraph (A),
13 the railroad carrier shall include in the notifica-
14 tion required under clause (ii) of that subpara-
15 graph an identification of each reason under
16 subparagraph (B) for which the railroad carrier
17 denied the application and an explanation of
18 how that reason for denial applies to the appli-
19 cation.

20 “(3) SCHEDULING.—Following approval of an
21 application under this subsection, the applicable pro-
22 vider shall schedule a date in coordination with the
23 railroad carrier for the placement or modification of
24 the applicable telecommunications or broadband

1 service facility, which shall commence not later
2 than—

3 “(A) the date that is 30 days after the
4 date of the approval; or

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

8 “(4) COMPENSATION.—A provider that submits
9 to a railroad carrier an application under this sub-
10 section shall pay the railroad carrier compensation
11 in an amount that is equal to the actual costs rea-
12 sonably and directly incurred by the railroad carrier
13 with respect to the application.

14 “(d) PETITION FOR RELIEF.—

15 “(1) IN GENERAL.—

16 “(A) RAILROAD CARRIER.—A railroad car-
17 rier may petition the Commission for relief re-
18 garding the placement or modification by a pro-
19 vider of a telecommunications or broadband
20 service facility in an area where a public right-
21 of-way intersects with a railroad corridor, or in
22 the right-of-way of the railroad carrier, if the
23 railroad carrier asserts that—

24 “(i) in the case of a placement or
25 modification with respect to which the pro-

vider has submitted an application to the railroad carrier under subsection (c), the amount of compensation that the provider proposes to pay under paragraph (4) of that subsection is not actual costs reasonably and directly incurred by the railroad carrier, as required by that paragraph; or

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

“(B) PROVIDER.—

“(i) IN GENERAL.—A provider may petition the Commission for relief regarding the placement or modification by the provider of a telecommunications or broadband service facility in an area where a public right-of-way intersects with a railroad corridor, or in the right-of-way of a railroad carrier, if the provider asserts that the relevant railroad carrier has—

“(I) wrongfully obstructed or delayed the placement or modification;

“(II) requested payment in an amount in excess of the actual costs required under subsection (c)(4); or

1 “(III) otherwise failed to comply
2 with this section or a regulation pro-
3 mulgated under this section.

4 “(ii) TIMING.—In the case of a place-
5 ment or modification with respect to which
6 a provider has submitted an application to
7 a railroad carrier under subsection (c), the
8 provider may not file a petition for relief
9 under clause (i) with respect to the place-
10 ment or modification before the earlier
11 of—

12 “(I) the date on which the rail-
13 road carrier notifies the provider of
14 the approval or denial of the applica-
15 tion; and

16 “(II) the day after the date that
17 is 60 days after the date on which the
18 railroad carrier receives the applica-
19 tion.

20 “(2) ADJUDICATION.—

21 “(A) JURISDICTION.—The Commission
22 shall be the sole Federal agency with jurisdic-
23 tion to hear and resolve a petition filed under
24 paragraph (1).

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

5 “(C) USE OF EXPERTS.—

6 “(i) IN GENERAL.—In adjudicating a
7 petition filed under paragraph (1), the
8 Commission may employ experts to advise
9 the Commission with respect to—

10 “(I) examining locations, plans,
11 specifications, and descriptions of
12 equipment and methods proposed to
13 be employed;

14 “(II) hearing any objections and
15 considering any modifications that the
16 applicable railroad carrier or provider
17 submits;

18 “(III) rejecting, approving, or
19 modifying proposed plans and speci-
20 fications; and

21 “(IV) technical, economic, and
22 other matters concerning the applica-
23 ble placement or modification.

24 “(ii) REIMBURSEMENT.—The party
25 against which the Commission rules on an

1 issue with respect to which an expert em-
2 ployed by the Commission under clause (i)
3 renders services under that clause shall re-
4 imburse the Commission for the cost of
5 those services.

6 “(iii) DEPOSIT OF COLLECTIONS.—
7 Amounts received to reimburse the Com-
8 mission for the cost of services rendered by
9 an expert employed under clause (i) shall
10 be deposited in, and credited to, the ac-
11 count through which funds were made
12 available to pay that cost.

13 “(iv) AUTHORITY.—The Commission
14 may employ experts under clause (i) pursu-
15 ant to section 3109(b) of title 5, United
16 States Code.

17 “(D) COORDINATION WITH FEDERAL
18 AGENCIES.—In adjudicating a petition filed
19 under paragraph (1), the Commission shall co-
20 ordinate with the Administrator of the Federal
21 Railroad Administration regarding any finding
22 of fact or determination relating to railroad
23 safety.

24 “(E) FINAL ORDER.—

1 “(i) IN GENERAL.—Not later than 90
2 days after the date on which a petition is
3 filed under paragraph (1), the Commission
4 shall issue a final order regarding the peti-
5 tion in which the Commission may grant
6 such relief as the Commission considers
7 appropriate.

8 “(ii) EXTENSION OF DEADLINE.—

9 “(I) IN GENERAL.—Except as
10 provided in subclause (II), the Com-
11 mission may extend the deadline with
12 respect to a petition under clause (i),
13 as the Commission considers appro-
14 priate.

15 “(II) EXCEPTION.—The Commis-
16 sion may not extend the deadline with
17 respect to a petition under clause (i)
18 on the basis of the coordination re-
19 quired under subparagraph (D).

20 “(e) RESPONSIBILITIES OF PARTIES.—

21 “(1) RAILROAD CARRIERS.—With respect to the
22 placement or modification by a provider of a tele-
23 communications or broadband service facility in an
24 area where a public right-of-way intersects with a

1 railroad corridor, or in the right-of-way of a railroad
2 carrier, the relevant railroad carrier shall—

3 “(A) take such protective measures as the
4 railroad carrier determines necessary and ap-
5 propriate; and

6 “(B) perform any work necessary to imple-
7 ment the placement or modification that the
8 provider is prohibited from performing because
9 of the limitations under subsection (f)(2)(D).

10 “(2) PROVIDERS.—With respect to the place-
11 ment or modification by a provider of a tele-
12 communications or broadband service facility in an
13 area where a public right-of-way intersects with a
14 railroad corridor, or in the right-of-way of a railroad
15 carrier, the provider—

16 “(A) shall not be required to obtain addi-
17 tional insurance for the placement or modifica-
18 tion; and

19 “(B) shall—

20 “(i) carry out all aspects of the imple-
21 mentation of the placement or modification
22 (other than any work necessary to imple-
23 ment the placement or modification that
24 the provider is prohibited from performing

1 because of the limitations under subsection
2 (f)(2)(D)); and

3 “(ii) ensure that the placement or
4 modification is carried out, and that the
5 telecommunications or broadband service
6 facility is operated, in accordance with—

7 “(I) all applicable Federal laws
8 and regulations, including those relat-
9 ing to railroad safety; and

10 “(II) any accepted industry
11 standards specified by the Commis-
12 sion.

13 “(f) RULEMAKING.—

14 “(1) IN GENERAL.—Not later than 1 year after
15 the date of enactment of this section, the Commis-
16 sion shall promulgate regulations (which may include
17 regulations applicable to railroad carriers) to imple-
18 ment this section in a manner that—

19 “(A) ensures railroad safety, including by
20 ensuring compliance with all applicable Federal
21 laws and regulations, including those relating to
22 railroad safety;

23 “(B) provides a process for more the time-
24 ly placement or modification of a telecommuni-
25 cations or broadband service facility in an emer-

1 agency situation than would otherwise be pro-
2 vided for under this section;

3 “(C) prevents substantial interference with
4 the infrastructure or operations of railroad car-
5 riers;

6 “(D) allows for the timely and efficient
7 placement and modification of telecommuni-
8 cations or broadband service facilities; and

9 “(E) provides a process for the more time-
10 ly placement or modification of a telecommuni-
11 cations or broadband service facility in a rail-
12 road carrier crossings that is discontinued or
13 abandoned than would otherwise be provided
14 for under this section.

15 “(2) MATTERS TO BE INCLUDED.—In the regu-
16 lations promulgated under paragraph (1), the Com-
17 mission shall—

18 “(A) establish standards and procedures
19 for determining whether the reasons for denial
20 under clauses (i) and (ii) of subsection
21 (c)(2)(B) are satisfied;

22 “(B) establish standards and procedures
23 for determining actual costs under subsection
24 (c)(4);

1 “(C) establish standards and procedures
2 for adjudicating petitions for relief under sub-
3 section (d), including with respect to reimburse-
4 ment of the Commission for the cost of services
5 rendered by experts employed under subsection
6 (d)(2)(C);

7 “(D) specify any limitations on the loca-
8 tions within an area where a public right-of-way
9 intersects with a railroad corridor, or within the
10 right-of-way of a railroad carrier, where a pro-
11 vider may perform work relating to the place-
12 ment or modification of a telecommunications
13 or broadband service facility, or on the types of
14 such work that a provider may perform within
15 such an area or right-of-way, in order to ensure
16 railroad safety and to prevent substantial inter-
17 ference with the infrastructure or operations of
18 railroad carriers; and

19 “(E) otherwise establish standards and
20 procedures and define terms as necessary to im-
21 plement this section.

22 “(3) COORDINATION WITH FEDERAL AGEN-
23 CIES.—In promulgating regulations under para-
24 graph, the Commission shall coordinate with the Ad-

1 ministrator of the Federal Railroad Administration
2 regarding any matter relating to railroad safety.

3 “(g) MEMORANDUM OF UNDERSTANDING.—Not later
4 than 60 days after the date of enactment of this section,
5 the Commission and the Administrator of the Federal
6 Railroad Administration shall confer and enter into a
7 memorandum of understanding to work cooperatively to
8 ensure that safety concerns of railroad carriers and users
9 of public rights-of-way are addressed in any coordination
10 that occurs pursuant to subsection (d)(2)(D) or (f)(3).

11 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-
12 tion, including in any regulation promulgated under sub-
13 section (f), may be construed as establishing, eliminating,
14 or modifying an agreement between a railroad carrier and
15 a labor organization representing a class or craft of em-
16 ployees of that railroad carrier that is covered by the Rail-
17 way Labor Act (45 U.S.C. 151 et seq.).”.