

FIRST REGULAR SESSION

HOUSE BILL NO. 321

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FITZWATER.

0938H.021

DANA RADEMAN MILLER, Chief Clerk

AN ACT

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

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

Section A. Sections 386.020 and 523.010, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 386.020, 393.1420, 523.010, and 523.310, to read as follows:

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

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

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

(3) "Basic interexchange telecommunications service" includes, at a minimum, two-way switched voice service between points in different local calling scopes as determined by the commission and shall include other services as determined by the commission by rule upon periodic review and update;

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 17 (a) Multiparty, single line, including installation, touchtone dialing, and any applicable
18 mileage or zone charges;
- 19 (b) Assistance programs for installation of, or access to, basic local telecommunications
20 services for qualifying economically disadvantaged or disabled customers or both, including, but
21 not limited to, lifeline services and link-up Missouri services for low-income customers or
22 dual-party relay service for the hearing impaired and speech impaired;
- 23 (c) Access to local emergency services including, but not limited to, 911 service
24 established by local authorities;
- 25 (d) Access to basic local operator services;
- 26 (e) Access to basic local directory assistance;
- 27 (f) Standard intercept service;
- 28 (g) Equal access to interexchange carriers consistent with rules and regulations of the
29 Federal Communications Commission;
- 30 (h) One standard white pages directory listing.
- 31
- 32 Basic local telecommunications service does not include optional toll-free calling outside a local
33 calling scope but within a community of interest, available for an additional monthly fee or the
34 offering or provision of basic local telecommunications service at private shared-tenant service
35 locations;
- 36 (5) "Cable television service", the one-way transmission to subscribers of video
37 programming or other programming service and the subscriber interaction, if any, which is
38 required for the selection of such video programming or other programming service;
- 39 (6) "Carrier of last resort", any telecommunications company which is obligated to offer
40 basic local telecommunications service to all customers who request service in a geographic area
41 defined by the commission and cannot abandon this obligation without approval from the
42 commission;
- 43 (7) "Commission", the "Public Service Commission" hereby created;
- 44 (8) "Commissioner", one of the members of the commission;
- 45 (9) "Competitive telecommunications company", a telecommunications company which
46 has been classified as such by the commission pursuant to section 392.245 or 392.361;
- 47 (10) "Competitive telecommunications service", a telecommunications service which
48 has been classified as such by the commission pursuant to section 392.245 or to section 392.361,
49 or which has become a competitive telecommunications service pursuant to section 392.370;
- 50 (11) "Corporation" includes a corporation, company, association and joint stock
51 association or company;

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

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

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

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

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

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

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

65 (14) "Electric plant" includes all real estate, fixtures and personal property operated,
66 controlled, owned, used or to be used for or in connection with or to facilitate the generation,
67 transmission, distribution, sale or furnishing of electricity for light, heat or power; [and] any
68 conduits, ducts or other devices, materials, apparatus or property for containing, holding or
69 carrying conductors used or to be used for the transmission of electricity for light, heat or power;
70 **and broadband infrastructure operated, controlled, owned, used, or to be used for, in**
71 **connection with, or to facilitate the provision of electric service, broadband operations, or**
72 **broadband service. For purposes of this subdivision, "broadband infrastructure",**
73 **"broadband operations", and "broadband service" mean the same as in subsection 3 of**
74 **section 393.1420;**

75 (15) "Electrical corporation" includes every corporation, company, association, joint
76 stock company or association, partnership and person, their lessees, trustees or receivers
77 appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation
78 generating electricity solely for railroad, light rail or street railroad purposes or for the use of its
79 tenants and not for sale to others, owning, operating, controlling or managing any electric plant
80 except where electricity is generated or distributed by the producer solely on or through private
81 property for railroad, light rail or street railroad purposes or for its own use or the use of its
82 tenants and not for sale to others. The term "electrical corporation" shall not include:

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

84 (b) Rural electric cooperatives operating under chapter 394;

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

88 (16) "Exchange", a geographical area for the administration of telecommunications
89 services, established and described by the tariff of a telecommunications company providing
90 basic local telecommunications service;

91 (17) "Exchange access service", a service provided by a local exchange
92 telecommunications company which enables a telecommunications company or other customer
93 to enter and exit the local exchange telecommunications network in order to originate or
94 terminate interexchange telecommunications service;

95 (18) "Gas corporation" includes every corporation, company, association, joint stock
96 company or association, partnership and person, their lessees, trustees or receivers appointed by
97 any court whatsoever, owning, operating, controlling or managing any gas plant operating for
98 public use under privilege, license or franchise now or hereafter granted by the state or any
99 political subdivision, county or municipality thereof;

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

103 (20) "Heating company" includes every corporation, company, association, joint stock
104 company or association, partnership and person, their lessees, trustees or receivers, appointed by
105 any court whatsoever, owning, operating, managing or controlling any plant or property for
106 manufacturing and distributing and selling, for distribution, or distributing hot or cold water,
107 steam or currents of hot or cold air for motive power, heating, cooking, or for any public use or
108 service, in any city, town or village in this state; provided, that no agency or authority created by
109 or operated pursuant to an interstate compact established pursuant to section 70.370 shall be a
110 heating company or subject to regulation by the commission;

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

117 (22) "Incumbent local exchange telecommunications company", a local exchange
118 telecommunications company authorized to provide basic local telecommunications service in
119 a specific geographic area as of December 31, 1995, or a successor in interest to such a company;

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

121 (a) Enables real-time, two-way voice communications;

122 (b) Requires a broadband connection from the user's location;

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

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

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

128 (25) "Interexchange telecommunications service", telecommunications service between
129 points in two or more exchanges;

130 (26) "InterLATA", interexchange telecommunications service between points in different
131 local access and transportation areas;

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

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

139 (29) "Line" includes route;

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

144 (31) "Local exchange telecommunications company", any company engaged in the
145 provision of local exchange telecommunications service. A local exchange telecommunications
146 company shall be considered a "large local exchange telecommunications company" if it has at
147 least one hundred thousand access lines in Missouri and a "small local exchange
148 telecommunications company" if it has less than one hundred thousand access lines in Missouri;

149 (32) "Local exchange telecommunications service", telecommunications service between
150 points within an exchange;

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

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

158 (35) "Nonbasic telecommunications services" shall be all regulated telecommunications
159 services other than basic local and exchange access telecommunications services, and shall

160 include the services identified in paragraphs (d) and (e) of subdivision (4) of this section. Any
161 retail telecommunications service offered for the first time after August 28, 1996, shall be
162 classified as a nonbasic telecommunications service, including any new service which does not
163 replace an existing service;

164 (36) "Noncompetitive telecommunications company", a telecommunications company
165 other than a competitive telecommunications company or a transitionally competitive
166 telecommunications company;

167 (37) "Noncompetitive telecommunications service", a telecommunications service other
168 than a competitive or transitionally competitive telecommunications service;

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

173 (39) "Operator services contract", any agreement between a traffic aggregator and a
174 certificated interexchange telecommunications company to provide operator services at a traffic
175 aggregator location;

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

177 (41) "Private shared tenant services" includes the provision of telecommunications and
178 information management services and equipment within a user group located in discrete private
179 premises as authorized by the commission by a commercial-shared services provider or by a user
180 association, through privately owned customer premises equipment and associated data
181 processing and information management services and includes the provision of connections to
182 the facilities of local exchange telecommunications companies and to interexchange
183 telecommunications companies;

184 (42) "Private telecommunications system", a telecommunications system controlled by
185 a person or corporation for the sole and exclusive use of such person, corporation or legal or
186 corporate affiliate thereof;

187 (43) "Public utility" includes every pipeline corporation, gas corporation, electrical
188 corporation, telecommunications company, water corporation, heating company or refrigerating
189 corporation, and sewer corporation, as these terms are defined in this section, and each thereof
190 is hereby declared to be a public utility and to be subject to the jurisdiction, control and
191 regulation of the commission and to the provisions of this chapter;

192 (44) "Railroad" includes every railroad and railway, other than street railroad or light rail,
193 by whatsoever power operated for public use in the conveyance of persons or property for
194 compensation, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations, real

195 estate and terminal facilities of every kind used, operated, controlled or owned by or in
196 connection with any such railroad;

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

201 (46) "Rate", every individual or joint rate, fare, toll, charge, reconsigning charge,
202 switching charge, rental or other compensation of any corporation, person or public utility, or any
203 two or more such individual or joint rates, fares, tolls, charges, reconsigning charges, switching
204 charges, rentals or other compensations of any corporation, person or public utility or any
205 schedule or tariff thereof;

206 (47) "Resale of telecommunications service", the offering or providing of
207 telecommunications service primarily through the use of services or facilities owned or provided
208 by a separate telecommunications company, but does not include the offering or providing of
209 private shared tenant services;

210 (48) "Service" includes not only the use and accommodations afforded consumers or
211 patrons, but also any product or commodity furnished by any corporation, person or public utility
212 and the plant, equipment, apparatus, appliances, property and facilities employed by any
213 corporation, person or public utility in performing any service or in furnishing any product or
214 commodity and devoted to the public purposes of such corporation, person or public utility, and
215 to the use and accommodation of consumers or patrons;

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

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

225 (51) "Street railroad" includes every railroad by whatsoever type of power operated, and
226 all extensions and branches thereof and supplementary facilities thereto by whatsoever type of
227 vehicle operated, for public use in the conveyance of persons or property for compensation,
228 mainly providing local transportation service upon the streets, highways and public places in a
229 municipality, or in and adjacent to a municipality, and including all cars, buses and other rolling
230 stock, equipment, switches, spurs, tracks, poles, wires, conduits, cables, subways, tunnels,

231 stations, terminals and real estate of every kind used, operated or owned in connection therewith
232 but this term shall not include light rail as defined in this section; and the term "street railroad"
233 when used in this chapter shall also include all motor bus and trolley bus lines and routes and
234 similar local transportation facilities, and the rolling stock and other equipment thereof and the
235 appurtenances thereto, when operated as a part of a street railroad or trolley bus local
236 transportation system, or in conjunction therewith or supplementary thereto, but such term shall
237 not include a railroad constituting or used as part of a trunk line railroad system and any street
238 railroad as defined above which shall be converted wholly to motor bus operation shall
239 nevertheless continue to be included within the term street railroad as used herein;

240 (52) "Telecommunications company" includes telephone corporations as that term is
241 used in the statutes of this state and every corporation, company, association, joint stock
242 company or association, partnership and person, their lessees, trustees or receivers appointed by
243 any court whatsoever, owning, operating, controlling or managing any facilities used to provide
244 telecommunications service for hire, sale or resale within this state;

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

249 (54) "Telecommunications service", the transmission of information by wire, radio,
250 optical cable, electronic impulses, or other similar means. As used in this definition,
251 "information" means knowledge or intelligence represented by any form of writing, signs,
252 signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

253 (a) The rent, sale, lease, or exchange for other value received of customer premises
254 equipment except for customer premises equipment owned by a telephone company certificated
255 or otherwise authorized to provide telephone service prior to September 28, 1987, and provided
256 under tariff or in inventory on January 1, 1983, which must be detariffed no later than December
257 31, 1987, and thereafter the provision of which shall not be a telecommunications service, and
258 except for customer premises equipment owned or provided by a telecommunications company
259 and used for answering 911 or emergency calls;

260 (b) Answering services and paging services;

261 (c) The offering of radio communication services and facilities when such services and
262 facilities are provided under a license granted by the Federal Communications Commission
263 under the commercial mobile radio services rules and regulations;

264 (d) Services provided by a hospital, hotel, motel, or other similar business whose
265 principal service is the provision of temporary lodging through the owning or operating of

266 message switching or billing equipment solely for the purpose of providing at a charge
267 telecommunications services to its temporary patients or guests;

268 (e) Services provided by a private telecommunications system;

269 (f) Cable television service;

270 (g) The installation and maintenance of inside wire within a customer's premises;

271 (h) Electronic publishing services;

272 (i) Services provided pursuant to a broadcast radio or television license issued by the
273 Federal Communications Commission; or

274 (j) Interconnected voice over internet protocol service;

275 (55) "Telephone cooperative", every corporation defined as a telecommunications
276 company in this section, in which at least ninety percent of those persons and corporations
277 subscribing to receive local telecommunications service from the corporation own at least ninety
278 percent of the corporation's outstanding and issued capital stock and in which no subscriber owns
279 more than two shares of the corporation's outstanding and issued capital stock;

280 (56) "Traffic aggregator", any person, firm, partnership or corporation which furnishes
281 a telephone for use by the public and includes, but is not limited to, telephones located in rooms,
282 offices and similar locations in hotels, motels, hospitals, colleges, universities, airports and
283 public or customer-owned pay telephone locations, whether or not coin operated;

284 (57) "Transitionally competitive telecommunications company", an interexchange
285 telecommunications company which provides any noncompetitive or transitionally competitive
286 telecommunications service, except for an interexchange telecommunications company which
287 provides only noncompetitive telecommunications service;

288 (58) "Transitionally competitive telecommunications service", a telecommunications
289 service offered by a noncompetitive or transitionally competitive telecommunications company
290 and classified as transitionally competitive by the commission pursuant to section 392.361 or
291 392.370;

292 (59) "Water corporation" includes every corporation, company, association, joint stock
293 company or association, partnership and person, their lessees, trustees, or receivers appointed by
294 any court whatsoever, owning, operating, controlling or managing any plant or property, dam or
295 water supply, canal, or power station, distributing or selling for distribution, or selling or
296 supplying for gain any water;

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

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

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

(1) "Broadband affiliate", a person that is either majority-owned or otherwise controlled by an electrical corporation and that is either a broadband operator, a broadband services provider, or both;

(2) "Broadband infrastructure", any and all component parts of an electrical corporation's infrastructure that may be used to provide broadband services, whether now existing or that may be developed in the future, and including, but not limited to, wires, copper cables, fiber optic cables, conduits, ducts, poles, antennas, transmitters, receivers, amplifiers, switches, multiplexers, routers, servers, and all appurtenances thereto;

(3) "Broadband operations", operation of all or any portion of an electrical corporation's broadband infrastructure in a manner that can be used by broadband services providers to provide broadband services;

(4) "Broadband operator", an electrical corporation or broadband affiliate that engages in broadband operations;

(5) "Broadband services":

(a) The provision of access to dark fiber within fiber optic cables, whether directly to end-use customers or to third parties for the third party's subsequent provision of access to such dark fiber to end-use customers; or

(b) The provision to third parties who are not end-use customers, for the third party's subsequent provision to end-use customers, of connectivity, via lit fiber or other components of the broadband infrastructure, whether to a data or information transmission medium or to a technology, and in either case for purposes of accessing the internet or providing other capabilities including, but not limited to, information sharing, information storage, information content, or protocol conversion;

(6) "Broadband services provider", an electrical corporation or a broadband affiliate that uses an electrical corporation's broadband infrastructure to provide broadband services;

(7) "Commission", the public service commission;

(8) "Electrical corporation", the same as defined in section 386.020.

3. (1) To the extent not otherwise authorized by law, and in addition to all other purposes for which electrical corporations may be formed under the laws of this state and all other powers and authority currently granted to electrical corporations under the laws of this state, an electrical corporation shall be authorized to do any or all of the following:

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

37 **(b) Operate the electrical corporation's broadband infrastructure for or in**
38 **connection with the electrical corporation's provision of electric service;**

39 **(c) Engage in broadband operation, or permit its broadband affiliates to engage in**
40 **broadband operations, using the electrical corporation's broadband infrastructure;**

41 **(d) Provide broadband services, or permit its broadband affiliates to provide**
42 **broadband services, using the electric corporation's broadband infrastructure; and**

43 **(e) Enter into contracts, leases, licenses, or other agreements concerning broadband**
44 **operations or broadband services with its broadband affiliates, end-use customers, or third**
45 **parties on any terms and conditions, including rates and charges, as the electrical**
46 **corporation in its sole discretion shall determine and, notwithstanding the provisions of**
47 **section 393.190 or any other law to the contrary, without securing any authorization,**
48 **permission, or approval from the commission.**

49 **(2) An electrical corporation shall not require any of its electric service customers**
50 **to purchase broadband services provided via the electrical corporation's broadband**
51 **infrastructure as a condition of receiving or continuing to receive electric service from the**
52 **electrical corporation.**

53 **(3) An electrical corporation shall not disconnect any customer from receiving**
54 **electric service due to the customer's failure to pay for broadband services provided via**
55 **the electrical corporation's broadband infrastructure.**

56 **4. (1) As used in this subsection, the following terms shall mean:**

57 **(a) "Broadband operations revenue", revenue received by an electrical**
58 **corporation, or its broadband affiliates, for the provision of broadband operations;**

59 **(b) "Broadband services revenue", revenue received by an electrical corporation,**
60 **or its broadband affiliates, for the provision of broadband services.**

61 **(2) When determining the revenue requirement used to set the electrical**
62 **corporation's base rates in the electrical corporation's general rate proceedings, the**
63 **following shall be included:**

64 **(a) The electrical corporation's test-year broadband operations revenues, as**
65 **updated, trued-up, or normalized, if applicable;**

66 **(b) The electrical corporation's test-year broadband services revenues, as updated,**
67 **trued-up, or normalized if applicable;**

68 **(c) The electrical corporation's prudently-incurred test-year operations and**
69 **maintenance expenditures associated with generating the revenues in paragraphs (a) and**

70 **(b) of this subdivision; and**

71 (d) The electrical corporation's prudently incurred investment in broadband
72 infrastructure as of the date the electrical corporation's other rate base additions are
73 accounted for.

74 (3) Any ordinance adopted under section 71.520 or 229.100 shall also grant the
75 electrical corporation the right to construct, install, maintain, repair, and replace
76 broadband infrastructure; the right to engage in broadband operations via the electrical
77 corporation's broadband infrastructure either directly or through its broadband affiliates;
78 and the right to provide broadband services via the electrical corporation's broadband
79 infrastructure, either directly or through its broadband affiliates, on and subject to the
80 terms and conditions of such ordinance.

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

523.010. 1. In case land, or other property, is sought to be appropriated by any road,
2 railroad, street railway, telephone, telegraph or any electrical corporation organized for the
3 manufacture, **distribution**, or transmission of electric current for light, heat, [ø] power, **or the**
4 **provision of broadband services**, including the construction, when that is the case, of necessary
5 dams and appurtenant canals, flumes, tunnels and tailraces and including the erection, when that
6 is the case, of necessary electric steam powerhouses, hydroelectric powerhouses, and electric
7 substations or any oil, pipeline or gas corporation engaged in the business of transporting or
8 carrying oil, liquid fertilizer solutions, or gas by means of pipes or pipelines laid underneath the
9 surface of the ground, or other corporation created under the laws of this state for public use, and
10 such corporation and the owners cannot agree upon the proper compensation to be paid, or in the
11 case the owner is incapable of contracting, be unknown, or be a nonresident of the state, such
12 corporation may apply to the circuit court of the county of this state where such land or any part
13 thereof lies by petition setting forth the general directions in which it is desired to construct its
14 road, railroad, street railway, telephone, or telegraph line or electric line, including, when that
15 is the case, the construction and maintenance of necessary dams and appurtenant canals, tunnels,
16 flumes and tailraces and, when that is the case, the appropriation of land submerged by the
17 construction of such dam, and including the erection and maintenance, when that is the case, of
18 necessary electric steam powerhouses, hydroelectric powerhouses and electric substations, **the**
19 **construction of broadband infrastructure**, or oil, pipeline, liquid fertilizer solution pipeline,

20 or gas line over or underneath the surface of such lands, a description of the real estate, or other
21 property, which the company seeks to acquire; the names of the owners thereof, if known; or if
22 unknown, a pertinent description of the property whose owners are unknown and praying the
23 appointment of three disinterested residents of the county, as commissioners, or a jury, to assess
24 the damages which such owners may severally sustain in consequence of the establishment,
25 erection and maintenance of such road, railroad, street railway, telephone, telegraph line, ~~[or]~~
26 electrical line, **or broadband infrastructure** including damages from the construction and
27 maintenance of necessary dams and the condemnation of land submerged thereby, and the
28 construction and maintenance of appurtenant canals, flumes, tunnels and tailraces and the
29 erection and maintenance of necessary electric steam powerhouses, hydroelectric powerhouses
30 and electric substations, or oil, pipeline, or gas line over or underneath the surface of such lands;
31 to which petition the owners of any or all as the plaintiff may elect of such parcels as lie within
32 the county or circuit may be made parties defendant by names if the names are known, and by
33 the description of the unknown owners of the land therein described if their names are unknown.

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

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

42 4. Except as provided in subsection 5 of this section, nothing in this chapter shall be
43 construed to give a public utility, as defined in section 386.020, or a rural electric cooperative,
44 as provided in chapter 394, the power to condemn property which is currently used by another
45 provider of public utility service, including a municipality or a special purpose district, when
46 such property is used or useful in providing utility services, if the public utility or cooperative
47 seeking to condemn such property, directly or indirectly, will use or proposes to use the property
48 for the same purpose, or a purpose substantially similar to the purpose for which the property is
49 being used by the provider of the public utility service.

50 5. A public utility or a rural electric cooperative may only condemn the property of
51 another provider of public utility service, even if the property is used or useful in providing
52 utility services by such provider, if the condemnation is necessary for the public purpose of
53 acquiring a nonexclusive easement or right-of-way across the property of such provider and only
54 if the acquisition will not materially impair or interfere with the current use of such property by

55 the utility or cooperative and will not prevent or materially impair such provider of public utility
56 service from any future expansion of its facilities on such property.

57 6. If a public utility or rural electric cooperative seeks to condemn the property of
58 another provider of public utility service, and the conditions in subsection 4 of this section do
59 not apply, this section does not limit the condemnation powers otherwise possessed by such
60 public utility or rural electric cooperative.

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

523.310. 1. As used in this section, the following terms mean:

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

5 (2) "Footprint", the area or areas described in an express easement within the
6 bounds of which the defendant easement holder may exercise easement rights granted,
7 including rights of access, or if the area or areas are not described in the express easement
8 or if the easement is other than an express easement, then the location or dimensions of the
9 areas that are determined by the court from evidence of the prior use of the easement by
10 the defendant easement holder and determined by the court to be reasonably necessary to
11 accomplish the defendant easement holder's prior use.

12 2. This section applies to any inverse condemnation or trespass cause of action,
13 whether common law or statutory, brought against a public utility, rural electric
14 cooperative, or municipally owned utility, where:

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

16 (2) The defendant uses the real property;

17 (3) The plaintiff alleges that the manner or extent of use by the defendant or the
18 defendant's assigns is an expanded use that increases the burden of the defendant's
19 easement, or that the use exceeds the scope of the defendant's easement rights; and

20 (4) The cause of action accrues on or after the effective date of this section.

21 3. As used in this section, "public utility" shall not include any electrical
22 corporation that has been granted a line certificate of convenience and necessity under
23 subsection 1 of section 393.170 to construct a high voltage direct current transmission line
24 but whose rates for wholesale transmission service are not subject to regulation by the
25 commission.

26 4. Any cause of action for inverse condemnation described in subsection 2 of this
27 section shall be commenced within two years after the cause of action shall have accrued,

28 and to the extent any general statute of limitations including, but not limited to, sections
29 516.010, 516.110, and 516.120, any special statute of limitations, or the common law of this
30 state would extend the period for commencing a cause of action described in subsection 2
31 of this section, the common law and any such statutes of limitation are hereby superseded
32 and displaced.

33 5. Any cause of action for trespass described in subsection 2 of this section shall be
34 commenced within two years after the cause of action shall have accrued, and to the extent
35 any general statute of limitations including, but not limited to, section 516.010, 516.110,
36 and 516.120, any special statute of limitations, or the common law of this state would
37 extend the period for commencing a cause of action described in subsection 2 of this
38 section, the common law and any such statutes of limitation are hereby superseded and
39 displaced.

40 6. In a cause of action for inverse condemnation described in subsection 2 of this
41 section, if the plaintiff prevails, the damage or taking shall be deemed permanent; the
42 injury to the plaintiff shall not be deemed to continue, accumulate, or accrue; and the
43 damages past, present, and future resulting therefrom, which shall always be greater than
44 zero, shall be fixed and determined as of the date the cause of action accrued.

45 7. In a cause of action for trespass described in subsection 2 of this section, a
46 defendant shall be entitled to a determination by the court as to whether the use by the
47 defendant, or its assigns, alleged by the plaintiff to be an expanded use or to exceed the
48 scope of the defendant's easement rights, is a public use. If the court finds such use is a
49 public use, and if the plaintiff prevails on the claim of trespass:

50 (1) The plaintiff shall not be granted an order of ejectment;

51 (2) The plaintiff shall not be granted any equitable remedies;

52 (3) The trespass shall be deemed permanent; the injury to the plaintiff shall not be
53 deemed to continue, accumulate, or accrue; and the damages, past, present, and future
54 resulting therefrom, which shall always be greater than zero, shall be fixed and determined
55 as of the date the cause of action accrued.

56 8. If a plaintiff prevails in a cause of action described in subsection 2 of this section,
57 then the finder of fact shall make a determination as to whether the defendant's expanded
58 use that increased the burden of defendant's easement or use by defendant or its assigns
59 that exceeded the scope of the defendant's easement rights occurred outside of the footprint
60 of defendant's easement. If the finder of fact finds such use did not occur outside the
61 footprint of the defendant's easement, the plaintiff shall not be entitled to, nor may the
62 plaintiff be awarded, any punitive damages, attorney's fees, costs, or expenses.

63 **9. To the extent the common law of this state or the provisions of any statute**
64 **including, but not limited to, section 523.283 and subdivision (11) of subsection 1 of section**
65 **394.080 would entitle or permit a plaintiff prevailing in a cause of action described in**
66 **subsection 2 of this section to receive relief or damages or pursue a remedy expressly**
67 **prohibited in subsections 6, 7, or 8 of this section, the common law and any such other**
68 **statutes are hereby superseded and displaced.**

69 **10. Upon the payment of an award of damages to a plaintiff who prevails in a cause**
70 **of action described in subsection 2 of this section, the scope of the defendant's easement**
71 **shall be permanently expanded to include the use or uses of the easement by the defendant,**
72 **that, prior to the payment, were found to have exceeded the scope of or increased the**
73 **burden of the easement, and permanently expanded to include the nonexclusive right to**
74 **lease or license to, or otherwise permit or agree to the use by, another party.**

75 **11. Recognizing that individual characteristics of every parcel of land make every**
76 **parcel unique, incapable of duplication, and of particular value, such that the damages**
77 **awarded in any trespass or inverse condemnation involving real property shall be**
78 **determined on an individualized, parcel-by-parcel basis, no cause of action described in**
79 **subsection 2 of this section shall be brought as an action on behalf of a class. The limitation**
80 **in this subsection is a substantive limitation and allowing a person to bring a class action**
81 **or other representative action would abridge, enlarge, or modify the substantive rights**
82 **addressed by this section.**

83 **12. In a cause of action described in subsection 2 of this section, the following shall**
84 **not be admissible in evidence for purposes of determining the plaintiff's damages or any**
85 **other purpose:**

86 **(1) Profits, fees, or revenues derived by the defendant from uses by the defendant**
87 **or its assigns of the easement; and**

88 **(2) The rental value of the real property or of the easement, including the rental**
89 **value of an assembled utility corridor of any type.**

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