

I MINA' TRENTAI TRES NA LIHESLATURAN GUÅHAN  
2015 (FIRST) Regular Session

Bill No. 18-33 (COR)

Introduced by:

V. Anthony Ada



**AN ACT TO ADD A NEW CHAPTER 81 TO, TITLE 21, GUAM  
CODE ANNOTATED RELATIVE TO THE DEPLOYMENT  
OF BROADBAND AND TELECOMMUNICATIONS  
INFRASTRUCTURE ON PUBLIC RIGHTS OF WAY.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1.** A new Chapter 81 is hereby added to 21GCA as follows:

**Chapter 81**

**Broadband and Telecommunications Deployment Act**

**Article 1**

**Broadband Infrastructure Deployment on Public Rights of Way**

**§81101. Short Title.** This Article shall be known as the “Broadband and Telecommunications Deployment Act.”

**§81102. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that all fifty states and the FCC are struggling with the challenge to bring broadband internet and advanced telecommunications services to all areas of the country. Nationwide, all internet service providers have found it difficult to service remote or sparsely populated areas without incurring significant infrastructure costs. In recent years, as urban populations grew, internet service providers have found it necessary to replace outdated infrastructure within crowded cities to keep up with the demand for services from business, government and

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individual customers. Similar issues will continually affect Guam consumers. While competition continues to moderate prices, all consumers of broadband services are faced with reality of the high cost associated with bring bandwidth more than 6,000 miles from the west coast of the United States. While little can be done in terms of local control to lower the costs of connectivity to the US mainland, the Government of Guam can do its share to keep costs down between internet service providers and individual homes by not profiting off the use of rights-of-way for broadband deployment.

*I Liheslatura* recognizes that the government of Guam has an important role in managing the public rights-of-way and public lands and waterways within its jurisdiction and control. While recognizing this important governmental function, *I Liheslatura* also finds that prompt, non-discriminatory access to public rights-of-way (as defined herein) by telecommunications and broadband providers on reasonable terms and conditions, including reasonable fees, is essential to facilities-based competition, the deployment of advanced telecommunications and broadband networks, and the implementation of network redundancy necessary to protect against network outages and to ensure the safety and security of the public. Accordingly, in enacting the Broadband and Telecommunications Deployment Act, *I Liheslatura*, while preserving the authority of governmental agencies of government of Guam to manage the public rights-of-way under their jurisdiction or control, seeks to provide greater clarity regarding conditions and fees that can lawfully be imposed on telecommunications providers relating to their use of such public rights-of-way. *I Liheslatura* thus seeks to ensure that the practices of governmental units with respect to access to these public rights-of-way for the installation of

telecommunications facilities do not go beyond legitimate management activities so as to create barriers to the deployment of advanced telecommunications and broadband networks.

To encourage the rapid deployment of advanced telecommunications and broadband networks, while recognizing the role of the government in managing the public rights-of-way within their jurisdiction, *I Liheslatura* finds and declares all of the following:

(a) all entities providing local, interstate or international telecommunications or telecommunications services or deploying facilities to be used directly or indirectly in the provision of such services shall have access to and use of all public rights-of-way within Guam in connection with the construction and operation of their networks;

(b) that governmental agencies controlling such rights-of-way shall issue permits for access to and use of public rights-of-way within a fixed and reasonable time to telecommunications providers, not to exceed thirty (30) days from the date of application for such permit, and that no additional authorization, franchise or agreement may be required for access to public rights-of-way;

(c) that revenue-based fees and excessive per-foot charges are a barrier to deployment, and that fees shall be limited to the actual and direct costs associated with managing the public rights-of-way, as further discussed in this Article.

(d) that governmental agencies shall not be permitted to use control over public rights-of-way to impose an additional tier of regulation on providers or to require terms and conditions that are unrelated to the actual management of the public rights-of-way;

(e) that reasonable limits shall be placed on certain management-related permit terms, including those relating to indemnification and bonding requirements;

(f) that departments, agencies, and instrumentalities of the government of Guam shall not discriminate in their treatment of providers over the terms and conditions of access to public rights-of-way; and

(g) that telecommunications providers shall have the ability to obtain expedited relief from the PUC for rights-of-way practices that are inconsistent with this Article, and bring existing permits and authorizations into compliance with this Article.

**§81103. Definitions. As used in this Article:**

(a) “Governmental Agency” means for purposes of this Chapter, any department, agency, public corporation or instrumentality of the Government of Guam.

(b) “Public rights-of-way” means, for purposes of this Article, the surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, easements, lanes, courts, ways, alleys, and boulevards, including, public lands and waterways used as public rights-of-way, as the same

now or may thereafter exist, which are under the jurisdiction or control of a governmental Agency.

(c) “Telecommunications” means, for purposes of this Article, the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received. For purposes of this Chapter, this definition includes information sent and received by cable television companies.

(d) “Telecommunications facilities” means, for purposes of this Article, facilities and equipment, including without limitation, cable, fiber, conduit, ducts, poles, cabinets, vaults, handholes, manholes, and other associated equipment and appurtenances, used directly or indirectly in the provision of telecommunications or telecommunications services. For purposes of this Chapter, this definition includes facilities owned or leased by cable television companies.

(e) “Telecommunications provider” or “provider” means, for purposes of this Article, a person, or an affiliate of the person, which provides local, interstate, or international telecommunications or telecommunication services or installs facilities used directly or indirectly in the provision of such telecommunications or telecommunications services. For purposes of this Chapter, this definition includes cable television companies.

**§81104. Authorization to Use Public Rights-of-Way; Grant of Construction Permit.**

(a) Telecommunications providers may access and use all public rights-of-way within Guam for the construction, maintenance, upgrade, repair, replacement, and removal of telecommunications facilities, in such manner that does not unreasonably incommode the public use of any such public rights-of-way.

(b) A governmental agency shall issue to telecommunications providers a construction permit for access to and for the ongoing use of public rights-of-way within its jurisdiction or control for the placement of telecommunications facilities. The governmental agency shall act upon a request by a telecommunications provider for a construction permit governing access to and use of any public rights-of-way within its jurisdiction or control within thirty (30) days of the date the telecommunications provider files an application for such permit.

(c) A governmental agency shall not: (1) unreasonably restrict or condition such access and use; (2) require a telecommunications provider to apply for or enter into an individual franchise, license, or other agreement as a condition of such access and use; or (3) require a permit or other authorization for a person to access, use, or acquire the facilities of other telecommunications providers or to acquire telecommunications services from another telecommunications provider or, for the access or use of the airwaves by a commercial mobile radio service provider.

(d) A governmental agency may require a telecommunications provider that places or seeks to place telecommunications facilities in the public rights-of-way within its jurisdiction or control to register with the governmental agency

provided that, in doing so, the information required is limited to the name of the registrant; name, address, and telephone number of a contact person for the registrant; and proof of insurance or self-insuring status adequate to defend and cover claims.

(e) This section does not require any telecommunications provider that, as of the Effective Date, occupies, or has obtained the consent of a governmental agency to use the public rights-of-way within its jurisdiction or control for the placement of existing telecommunications facilities to apply for the additional or continued consent of the local governmental agency for such facilities.

(f) Structures or vaults of up to Ten feet by Sixteen Feet (10 feet X 16 feet) housing telecommunications and related equipment may be placed in rights of way so long as the structures are not placed on main highways, do not impede the vision of drivers and no plans for widening roads within five years exist where the structures are sited. In the event that road widening or development necessitates movement of the structures, all relocation costs shall be born by the telecommunications provider.

**§81105. Regulations and Fees Relating to Occupation of Public Rights-of-Way; Performance Bonds and Indemnification.**

(a) Any rules or regulations adopted by a governmental agency which govern access to or use of its public rights-of-way by telecommunications providers, and any conditions of a permit granted under this Section or application requirements for such permit, shall (1) be competitively neutral and

nondiscriminatory as to all providers; and (2) relate directly to the management and direct and demonstrable effects of a provider's access to and use of such public rights-of-way.

(b) A governmental agency shall not use its authority under this Section as a basis to exercise regulatory control or jurisdiction over a provider's operations, systems, technical, legal or financial qualifications, services, service quality, service territory, rates, or other business activities.

(c) A telecommunications provider shall not be required to waive its right to judicial or administrative review or any other remedies as a condition of obtaining a permit or of accessing and using the public rights-of-way. Any waiver of such rights shall be void as against public policy. A telecommunications provider's agreement to, or negotiation of, a permit or any conditions contained therein, shall not be deemed such a waiver.

(d) Any fee required by a governmental agency relating to public rights-of-way, utility poles and permitted encroachments shall be imposed on a nondiscriminatory and competitively neutral basis and shall not exceed the actual and direct costs incurred by the governmental agency in issuing and administering the permit for access or use. A governmental agency may not impose other non-monetary compensation on the provider in connection with its access to and use of the public rights-of-way, such as the use or provision of telecommunications facilities, the provision of telecommunications services, or the use or provision of any other goods or service. Such fees shall not exceed fees charged for such uses or access shall not exceed the fees charged as of December 31, 2009.



(e) Performance Bonds.

(1) A governmental agency may require a telecommunications provider to provide an individual project performance bond naming the governmental agency as an obligee for the cost to restore the public rights-of-way to its condition prior to the provider's construction of the telecommunications facilities in the public rights-of-way under a permit. In the event that the governmental agency requires such a performance bond, the bond shall not exceed the provider's good faith estimate of the cost to restore the public rights-of-way to its condition prior to the construction of such telecommunications facilities in the public rights-of-way. The performance bond shall terminate thirty (30) days following completion of restoration of the affected public rights-of-way but no later than one year past the completion of restoration. If a governmental agency requires a telecommunications provider to provide a construction bond at the onset of an individual project, once the construction is complete the construction bond may revert to 10% of the construction bond amount to satisfy maintenance and restoration.

(2) The governmental agency shall allow a telecommunications provider, at its option, to provide a blanket bond covering multiple projects, in which case an individual project performance bond may only be required for the construction of telecommunications facilities in public rights-of-way under a permit to the extent that the reasonable estimate of restoration costs for that project and all other projects covered by the blanket bond exceeds the amount of the blanket bond. A bond shall not be required where the governmental agency determines it

is not necessary to secure restoration considering, without limitation, the amount of restoration for the project, or the telecommunications provider's ability to cover any claims without the need for security in the form of a bond, including through the provision of self-insurance in a form acceptable to the governmental agency.

(3) Except as provided in this subsection, a governmental agency shall not require a performance bond or other security from a telecommunications provider in connection with its access to and use of the public rights-of-way. The foregoing limitation shall not apply to the proof of insurance that may be required pursuant to §81104(d) of this Article.

(f) Indemnification.

(1) A governmental agency shall have authority to include in a permit a provision requiring the telecommunications provider to defend, indemnify, and hold harmless the governmental agency from liabilities, damages, costs, and expenses, including reasonable attorney's fees, arising from injury to person or property proximately caused by the acts or omissions of the telecommunications provider in connection with its access to or use of the public rights-of-way.

(2) Any such provision shall: (a) require the governmental agency to promptly notify the telecommunications provider of any claims, demands, or actions ("Claims") covered by such provision; (b) provide the telecommunications provider with the right to defend and compromise such claims, and require the governmental agency to cooperate in the defense of such Claims; and

(c) not apply to Claims arising from the negligent, willful or other acts of the governmental agency, its employees or agents, except to the extent such Claims arise from the joint negligence of the telecommunications provider and governmental agency, in which case, the amount of the Claims for which the governmental agency shall be entitled to indemnification shall be limited to that portion attributable to the actions of the telecommunication provider.

(3) Except as provided in this subsection, a governmental agency shall not require indemnification from a telecommunications provider in connection with its access to and use of the public rights-of-way.

**§81106. Action on Application; Review**

(a) If the governmental agency has not acted upon an application for a permit under this Section within thirty (30) days of the date of such application, the application shall be deemed granted. If the local governmental agency has denied such application, or has granted such application on conditions that the telecommunications provider believes to be unlawful under this Section, the telecommunications provider shall have the right to bring an action in petition the Public Utility Commission for injunctive, declaratory, or other appropriate relief. Such petition shall be heard on an expedited basis.

(b) Upon petition of any telecommunications provider that an existing arrangement does not comply with this Section, the governmental agency shall reform the existing arrangement to comply with this Section. .

(c) In an action by a telecommunications provider against the governmental agency for a violation of this Section, the prevailing party may recover from the other court costs and reasonable attorney's fees at trial and on appeal.

(d) The Director of the Department of Public Works may, for cause expressed in a written notice, delay the provisions of paragraph (a) of this Section for successive of thirty day (30) periods up to one hundred eighty (180) days. Cause expressed in written notice shall be required for each successive thirty (30) day extension. Nothing herein shall be construed as to limit the ability of agency with jurisdiction over the right(s)-of-way to deny, for reasonable cause, an application to use such right(s)-of-way in a manner consistent with the intent of this Article.

#### **§81107. Exempt Properties**

This Article shall not apply to any Chamorro Land Trust or Ancestral Lands properties except to provided internet, telecommunications and television services to such properties or to utilize utility easements in a manner consistent with Public Law.

#### **§81108. Severability**

If any provision of this Article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Article, which are to be given effect without the invalid provision or application, and to this end the provisions of this Article are deemed severable.

#### **§81109. Effective Date**

This Article will become effective upon enactment.

**Section 2. Area Regulation.** A new (i) is added to 21 GCA 61503 as follows:

(i) Structures housing utility equipment, including telecommunications equipment and back up generation, so long as the structures are no greater than 200 square feet in area.

**Section 3. Exception for Nonconforming Buildings and Nonconforming Use of Land.** A new Section (d) is *added* to Title 21, GCA, 56 1526 as follows:

"(d) Structures *or* buildings housing utility equipment, including telecommunications equipment and back up generation are hereby deemed to be legal nonconforming uses of land in all land zones, so long as the building *or* structure does *not exceed* three hundred fifty (350) square feet."

**Section 4. Moratorium permit fees and lease payments for deployment of Fiber Optics network.** For a period of ten (10) years following the effective date of this Act, agencies and instrumentalities of the Government of Guam shall not, other than the cost of electricity; charge any rents, fees or other exactions related to the underground and aerial fiber optics networks deployed for the purpose of providing data, telecommunications or entertainment services to residential, governmental and business consumers. This Section, however, does not waive the obligations any company deploying a fiber optics network

from repairing and restoring any road, rights-of way or facility that has been damaged or excavated as a result of such deployment.