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## **OLR Bill Analysis**

### **sHB 6442**

#### ***AN ACT CONCERNING EQUITABLE ACCESS TO BROADBAND.***

#### **SUMMARY**

This bill contains numerous provisions related to broadband Internet access service (referred to as “broadband service” below) and broadband Internet access service providers (“broadband providers”). Among other things, it:

1. sets certain goals that state agencies must consider when implementing the bill;
2. requires the Office of Policy and Management (OPM) to develop state broadband availability maps and the Department of Energy and Environmental Protection (DEEP) to develop broadband speed metrics;
3. requires property owners to disclose, upon request, their property’s Internet speeds when they publicly list it for sale or rent;
4. allows municipalities to use grants from the Local Capital Improvement Program to build a municipal broadband network that meets certain speed requirements;
5. allows the Public Utilities Regulatory Authority (PURA) to exercise certain elements of its regulatory powers over broadband providers;
6. requires broadband providers to pay into the Public Utility Control Fund;
7. requires broadband providers to refund customers for service outages that last more the 24 hours;

8. requires PURA to develop a “one-touch make-ready” procedure for attaching additional equipment to utility poles; and
9. limits the days and times when a broadband provider can terminate a customer’s service due to delinquent payments.

Under the bill, “broadband Internet access service” is a mass-market retail service by wire or radio that provides the capability to transmit data to, and receive data from, all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the service’s operation, but excluding dial-up Internet access service. A “broadband Internet access service provider” is an entity that provides broadband Internet access service through facilities occupying public highways or streets authorized by PURA, including through a certificate of public convenience and necessity, a certificate of video franchise authority, a certificate of cable franchise authority, or as a certified telecommunications provider (see BACKGROUND). (Presumably, these definitions apply throughout the bill, although the bill limits their applicability to Section 1.)

EFFECTIVE DATE: July 1, 2021

## **§ 2 — GENERAL AGENCY DIRECTIVES**

The bill requires state agencies, in carrying out the bill’s provisions, to consider the extent to which their programs or policies provide for affordable, high-speed broadband service and will (1) promote the state’s economic development; (3) expand educational and employment opportunities for state residents; (4) improve access to telehealth services; and (5) enhance service delivery by public, private, and not-for-profit institutions and entities.

Under the bill, these programs and policies must:

1. ensure the universal availability and accessibility of high-speed broadband service to all state residents and businesses;
2. establish an advanced standard for broadband service that increases with consumer demand and technological

developments;

3. ensure that broadband service is available and affordable on a nondiscriminatory basis for all segments of the state's population, regardless of income, race, ethnicity, and religion;
4. study and create structures that allow partners and providers to successfully build and sustain broadband service infrastructure in all corners of the state;
5. ensure that state, municipal, and private educational institutions have continual access to broadband service at all times for educational and learning purposes;
6. encourage existing and new broadband providers to pilot and offer affordable services for residents, businesses, and state and municipal governments;
7. create a regulatory environment that protects consumers and incentivizes innovation, competition, and robust services from broadband providers; and
8. invest in developing a diverse broadband service technology workforce by encouraging strong ties to the state's educational community to grow the talent pipeline.

### **§ 3 — BROADBAND MAPPING**

The bill requires OPM, in consultation with DEEP, the Office of State Broadband (OSB), the Department of Economic and Community Development (DECD) and other state agencies it deems appropriate, to develop a plan and reporting requirements to produce up-to-date maps of broadband availability and upload and download speeds in the state. It must do this in accordance with the state laws on geospatial information systems and the state data plan. OPM, OSB, and DEEP must jointly report on the plan's status to the governor by January 31, 2022.

The bill requires that broadband providers be consulted in

developing the plan and reporting requirements for producing and maintaining detailed and accurate broadband maps. It allows OPM to employ outside consultants to develop the maps. It also requires the DECD commissioner to make recommendations about the needs of the business community and economic development, which OPM must include in the joint report.

The bill requires the Commission for Educational Technology (CET) to analyze the availability of broadband service and learning devices for students in pre-K to grade twelve and post-secondary education, including vocational and technical opportunities. It must do so in concert with, and informed by, the state broadband mapping activities, and in consultation with the Department of Education (DOE), OSB, OPM, the Connecticut State Colleges and Universities, the Office of Higher Education, and DECD. CET must report the status of its analysis to the governor and legislature by July 1, 2023.

#### **§ 4 — BROADBAND SPEED METRICS**

The bill requires DEEP, by January 31, 2022, to establish a broadband Internet speed classification metric of (1) well served, (2) adequately served, and (3) underserved communities in the state, to inform state policy, investment strategy and consumer awareness. It must do so in consultation with OSB, DECD, CET, and OPM. The metrics must include both upload and download speed metrics and other applicable standards, as DEEP determines.

By January 31, 2022, DEEP, in consultation with OSB, OPM, and DECD, must begin annually reporting on the metrics to the governor and the Energy and Technology Committee. The report must also include additional data sharing requirements developed in the plan and reporting requirements to produce broadband maps (see § 3).

Also, by January 31, 2022, DEEP, in consultation with OSB, OPM, and DECD, must begin annually reporting on the status and progress made towards a state-wide goal of attaining, by January 1, 2027, universal access to (1) broadband Internet download speeds averaging one gigabit per second, and (2) broadband Internet upload speeds

averaging two hundred megabits per second. DEEP must submit the annual report to the governor and Energy and Technology Committee until the goal has been met. The bill requires the broadband Internet speed classifications be adjusted each October 1, based on this report.

## **§ 5 — DISCLOSURE OF A PROPERTY'S INTERNET SPEEDS**

The bill requires each broadband provider to (1) maintain records of a property's available broadband Internet upload and download speeds for the preceding twelve months of occupation and (2) make them available to the property's Internet service account holder and to the serviced property's owner for free.

It also requires a property owner to disclose the property's upload and download speeds for the preceding twelve months of occupation, upon request, when the property is publicly listed for sale or rent.

## **§§ 6-7 — MUNICIPAL BROADBAND**

### ***The Municipal Gain (§ 6)***

The law gives each municipality (town, city, borough, or fire district) and the Department of Transportation (DOT), a right to occupy, for free, one position ("gain") on any utility pole or underground communications duct within the municipality for any purpose. The bill specifies that this may include providing broadband Internet access service to the public in the municipality, either directly or through commercial arrangements with third parties. But if a municipality sells its right to occupy and use the gain to a third-party company, the company must pay any applicable public utility pole administration or attachment fees.

### ***Local Capital Improvement Funds (§ 7)***

Current law allows Local Capital Improvement Program (LoCIP) grants to fund activities related to planning a municipal broadband network with a speed of at least 384 megabits per second (Mbps). The bill allows the grants to also be used for constructing the network but raises the network's required speed to one gigabit per second for Internet downloads and 200 Mbps for Internet uploads.

Under the LoCIP, municipalities must apply to OPM for formula-based entitlement grants that may be used for various specified capital projects, including improvements to roads and sidewalks, building security systems, and technology upgrades (CGS § 7-535 et seq.).

## **§§ 8-10 & 12 — PURA JURISDICTION OVER PROVIDERS**

### ***General Authority (§ 8)***

Current law generally requires PURA to keep fully informed about the condition of a regulated utility company's facilities and equipment with respect to (1) their ability to meet their legal duties and (2) the safety of their employees and the public. The bill extends PURA's responsibility for this to also cover broadband providers.

In doing so, it allows PURA to order reasonable improvements, repairs, or alterations to the providers' facilities and equipment, and changes in a provider's way of operating, as may be reasonably needed in the public interest. The bill also specifies that the general purpose of this provision and the provision on holding companies (see below) is to (1) assure that the state has its full powers to regulate broadband Internet access service providers, (2) increase PURA's powers, and (3) promote local control of broadband providers, and that they must be construed to effectuate these purposes.

### ***Complaints (§ 9)***

The bill allows individuals and municipalities to make a written complaint to PURA about any defects in a broadband provider's facilities or equipment, or how it is being operated, if it is endangering public safety or the health and safety of employees. Current law allows this for the facilities and equipment of regulated utility companies. As under the current law, if the complainant requests it, PURA must not disclose the complainant's name except under certain limited circumstances.

### ***Accident Notification (§ 10)***

The bill extends current laws' requirements for regulated utility company accident reporting to cover broadband providers. Among other things, this requires a provider to notify PURA about any

accident involving a personal injury or public safety that was or may have been connected with or due to the operation of its property or caused by contact with its wires. The provider must notify PURA as soon as reasonably possible after the accident occurs, unless it is a minor accident, as defined in PURA's regulations.

**Fines.** The bill also increases, from \$500 to \$5,000, the maximum fine that may be imposed on any person, regulated utility company, broadband provider, or electric supplier that fails to comply with law's accident notification requirements.

### **General Enforcement Powers (§ 12)**

By subjecting broadband providers that have more than \$100,000 in annual gross revenues to the Public Utility Control Fund assessment (see § 12 below), the bill also brings these providers under PURA's general enforcement powers for public service companies. Thus, the broadband providers must obey, observe, and comply with all applicable provisions of the laws and regulations on public service companies. And if PURA finds that they failed to do so, it must fine them as required by the applicable law, or if no penalty is prescribed, up to \$10,000 for each offense, or up to \$40,000 for failure to comply with an order from PURA. Under the bill, the same notice and procedural requirements that apply to public service companies for these penalties also apply to the covered broadband providers.

## **§ 11 — PURA REVIEW OF HOLDING COMPANIES**

Current law requires PURA's review and approval when:

1. a utility company, holding company, or out-of-state agency (a) interferes with, (b) seeks to interfere with, or (c) exercises or seeks to exercise control over a Connecticut utility company, cable-TV company, or holding company; or
2. any entity (a) takes actions that make it a holding company that controls a Connecticut utility or cable-TV company; (b) acquires control over such a holding company; or (c) takes any action that, if successful, would make it a holding company or give it

control over a holding company.

The bill expands this provision to also require PURA's review and approval when these actions involve a certified telecommunications provider, certified competitive video service provider (e.g., Frontier-TV), certified video franchise authority provider, or broadband provider (referred to as "service providers" below). (By law, a certified competitive video service provider operates under a certificate of video franchise authority, thus the difference between a certified competitive video service provider and a certified video franchise authority provider is unclear.)

This expansion generally subjects the service providers to the same requirements, criteria, and procedures applicable to other entities when PURA reviews these holding company actions. Among other things, it:

1. allows PURA to request the views of the providers as part of its investigation;
2. requires PURA to consider factors such as the applicant for approval's financial, technological, and managerial suitability;
3. allows PURA to order a party in the proceeding to refrain from communicating with certain entities; and
4. allows the service providers to seek a court injunction under certain circumstances.

***Decision Deadline***

Current law generally requires PURA to issue its decision within 200 days after the application for review and approval was filed. The bill however, requires PURA to issue its decision within 120 days when these actions involve a cable TV company (which is currently subject to the 200-day deadline), holders of a certificate of cable franchise authority (see BACKGROUND), and holders of a certificate of video franchise authority. Unlike current law for the 200-day deadline, which allows PURA to extend the deadline by 30 days after

notifying the parties and intervenors, the bill does not allow PURA to extend the 120-day deadline unless the entity seeking approval agrees.

### **§ 12 — PUBLIC UTILITY CONTROL FUND**

Under current law, the administrative costs of PURA, the Office of Consumer Council (OCC), and DEEP's Bureau of Energy and Technology are funded through assessments on public service companies, telephone companies, certified telecommunications providers, retail electric suppliers, and certified competitive video service providers that had more than \$100,000 in gross revenues in the state in the preceding calendar year. PURA annually assesses each company for its share of expenses for OCC, DEEP's energy bureau, and PURA.

The bill also subjects to this assessment broadband providers that had more than \$100,000 in gross revenues in the state in the preceding calendar year. In addition, it expands the assessment to also cover OPM's expenses related to developing broadband mapping and speed metrics as required under the bill.

### **§ 13 — COMPLAINTS AND PURA MEDIATION**

The bill requires PURA to receive, process, and record consumer and business complaints for each broadband provider. And it requires them to each implement a process for handling inquiries from PURA and customer inquiries, billing issues, service issues and other complaints.

If an issue is not resolved through this process, the bill allows a customer to ask PURA for a confidential, nonbinding mediation with the broadband provider, and a designated member of PURA's staff must serve as the mediator. If the mediation is unsuccessful, the customer may file a formal complaint with PURA. If it finds the provider noncompliant with these provisions on complaints and mediation, PURA must order the provider to remedy the noncompliance within a reasonable period of time. A provider's failure to comply may subject it to civil penalties of up to \$40,000 for a failure to comply with an order, and injunctive relief.

#### **§ 14 — BROADBAND PROVIDER LIMITATIONS**

The bill prohibits broadband providers from (1) blocking, restricting, or interfering with an end user's use of nonharmful devices, (2) interfering with an end user's ability to select a broadband provider, or (3) denying a potential customer broadband service based on discriminatory financial terms, credit scores, or arrearage on charges for other services that the provider offers.

#### **§ 15 — SERVICE OUTAGES**

The bill requires broadband providers, after a power outage, to restore service to their customers within 24 hours after power has been restored, unless PURA extends the deadline due to the severity of a weather, or other catastrophic, event.

It also requires each provider to give an affected customer an account credit or refund for any outage, continuous or intermittent, of broadband service that occurs for the customer for more than 24 consecutive hours, unless the customer caused the outage. Under the bill, anytime a provider has such an outage it must file a report with PURA and OSB within 15 days after the outage (the bill does not specify if it is 15 days from the beginning or end of the outage).

The bill requires PURA, by December 31, 2021, to begin a proceeding to investigate the resiliency of service and infrastructure provided by wireline cable, telecommunications, and broadband providers to ensure proper planning for the timely restoration of broadband services after electrical or other outages.

#### **§ 16 — NOTICE REQUIREMENTS**

The bill requires broadband providers, when they initially activate a customer's service and then annually or upon request, to provide a customer with a notice of (1) all available options for broadband service, including upload and download speeds; (2) the charges for each option; (3) its credit policies, including any finance charges or late payment charges; and (4) its network management practices related to an end user's Internet use.

The bill also requires broadband providers to inform PURA, DEEP, the Energy and Technology Committee's chairpersons, OSB, and each customer within the affected service area about any changes to their (1) charges for Internet service or equipment use, (2) upload or download speeds, and (3) network management practices related to an end user's Internet use. The providers must do this at least 30 days before implementing the change.

### **§ 17 — ANNUAL REPORTS BY BROADBAND PROVIDERS**

The bill requires each broadband provider, starting by March 1, 2022, to annually file a report with PURA, DEEP, the Energy and Technology Committee's chairpersons, OSB, and DECD. The report must be on the provider's operations within the state, including availability of its broadband service areas, upload and download speeds in each service area, service outages, and other requirements set by PURA. The report must be provided in a form designated by PURA, in consultation with DEEP, DECD, and OSB.

### **§§ 18-19 — VIDEO & CABLE-TV PROVIDERS**

Current law prohibits PURA from requiring certified competitive video service providers (e.g., Frontier-TV) and companies that have a certificate of cable franchise authority (i.e., cable-TV providers) to comply with facility build-out requirements or to provide their services to a customer through any specific technology. The bill removes this prohibition. It keeps the law's prohibition on PURA imposing any rate regulation on these types of video providers, but for certified competitive video service providers, it specifies that the prohibition is limited to regulating rates for video services.

The bill requires each certified competitive video service provider and cable-TV provider to submit an affidavit certifying that it has facilities in the public highways, streets, or other public rights-of-way in its service areas that are capable of providing video service and all other services that it offers to each residential, governmental, and commercial address. They must submit their affidavits by September 30, 2022, to PURA, DEEP, the Energy and Technology Committee's chairpersons, OSB, and DECD. The bill allows the providers to

consider using existing state broadband assets to comply with this requirement.

The bill prohibits certified competitive video service providers and cable-TV providers from assessing a contribution in aid of construction or any other charge to a potential customer for the build-out of any facilities in the public highways, streets, or other public rights-of-way.

Under the bill, if either type of provider fails to comply with the affidavit requirement or assesses a prohibited build-out charge, PURA may impose civil penalties of up to \$10,000 per offense and open a proceeding to revoke the provider's certification.

## **§ 20 — UTILITY POLE ATTACHMENTS AND UNDERGROUND CONDUIT**

### ***Make-Ready Requirements***

The bill requires PURA, in an uncontested proceeding and by January 31, 2022, to develop a process for constructing facilities in the public highways, streets, or other public rights-of-way that ensures timely and nondiscriminatory procedures for utility pole attachments and conduit excavations for telecommunications service providers and broadband providers.

It also requires PURA, by that same date and in an uncontested proceeding, to develop a "one-touch make-ready" process for attaching telecommunications service and broadband service facilities on utility poles, to be implemented by the poles' owners. Under the bill, a "one-touch make-ready" is modifying or replacing a utility pole, or the lines or equipment on it, to accommodate additional facilities on the pole, and the person attaching the new equipment performs all of the modification or replacement work.

Under the bill, PURA must submit a report, by January 1, 2022, that includes its fully developed one-touch make-ready process to the Energy and Technology Committee, OSB, DEEP, DECD, and DOT. (The bill requires PURA to submit this report before its deadline to develop the process.)

### ***Pole Attachments***

The bill requires that an applicant for a utility pole attachment license made to the pole's owner or custodian, be granted a (1) temporary license within 30 days after submitting a complete application and (2) permanent license within 90 days after submitting a complete application. It requires PURA to establish an expedited dispute resolution process to address any issues that may arise between an individual attaching telecommunications service or broadband service facilities on a utility pole and the pole's owner or custodian.

### ***Requirements for Underground Facilities***

The bill requires PURA to impose certain requirements on Internet access service providers when they apply to build underground facilities that will contain conduit for telecommunications service providers or broadband providers (it is unclear when or why the providers must apply to PURA to do this). Under the bill, PURA must condition its approval on the following requirements:

1. the size of the conduit must be consistent with industry best practices and sufficient to accommodate potential demand;
2. handholes and manholes for fiber optic cable access and pulling, respectively, must be placed at intervals consistent with industry best practices;
3. the conduit must be installed with a pull tape and capable of supporting additional fiber optic cable;
4. the applicant must notify telecommunications service providers and broadband providers about the proposed excavation to reduce the potential for future street excavations in the same location;
5. a telecommunications service provider or broadband provider, upon request, must be able to access the conduit on a competitively neutral and nondiscriminatory basis, and for a charge that does not exceed a cost-based rate; and

6. the applicant must report to PURA upon completion to verify that it has complied with the above requirements.

### ***Excavations in State Highway Rights-of-Way***

For excavations in the state highway rights-of-way, the bill requires the applicant to comply with DOT's encroachment permit process, including paying any applicable fees. Any application for construction in the public highways, streets, or other public rights-of-way must require the applicant to install a conduit for DOT's benefit, as required by the municipal gain law (see § 6 above).

The bill authorizes the DOT commissioner to lease space or enter into a contract or agreement to permit access to space, in any conduit installed by DOT in the public highways, streets, or other public rights-of-way. The lease or contract may be on the terms and conditions, and for any purpose, deemed to be in the public interest by the commissioner. The bill specifies that it does not limit DOT's use of conduits on public highways, streets, or other public rights-of-way as otherwise permitted by law.

### ***Provision Coverage & Penalties***

Under the bill, all PURA-regulated utility companies and other persons that PURA authorizes to install facilities in, under, or over the public highways, streets, or other public rights-of-way must obey, observe, and comply with these provisions on pole attachments and underground conduit and PURA's applicable orders about them. Failure to comply may result in a fine of up to \$100,000 for a willful violation or up to \$50,000 for other violations. PURA must impose the civil penalty under its statutory procedure for doing so.

Under the bill, these fines cannot be recovered in any rate proceeding conducted by PURA.

## **§ 21 — ACCESS TO OCCUPIED BUILDINGS**

The bill gives each broadband provider the same right of access to an "occupied building" as telecommunications service providers have under current law. Under the bill, an "occupied building" is a building

or a part of a building that is rented, leased, hired out, arranged or designed to be occupied, or is occupied (1) as the home or residence of at least three families living independently of each other; (2) as the place of business of at least three businesses conducting business independently of each other, or (3) by any combination of at least three independent families and businesses. It includes trailer parks, mobile manufactured home parks, nursing homes, hospitals, and condominium associations.

In effect this requires, among other things, an occupied building's owner to allow wiring to provide broadband service in the building if: (1) a tenant requests services from the broadband provider; (2) the entire cost of the wiring is assumed by the provider; and (3) the provider indemnifies and holds the owner harmless for any damages caused by the wiring.

The bill also eliminates a provision in current law that gives certified competitive video service providers similar rights and responsibilities for service and wiring to multi-unit residential buildings (§ 18). (Presumably, these providers would, in practice, also be covered by the provision of § 21 in the bill.)

## **§ 22 — ANTI-DISCRIMINATION**

Current law prohibits telephone companies and certified telecommunications providers from (1) refusing to provide, or negotiate to provide, their services to any customer because of age, race, creed, color, national origin, ancestry, sex, gender identity or expression, marital status, sexual orientation, lawful source of income, disability or familial status; or (2) declining to provide service to a customer solely because the customer is in an economically distressed area or qualifies for hardship status.

The bill expands these prohibitions to include broadband providers and their services and adds economic status to the list of protected characteristics. It similarly covers broadband providers under the current law's prohibition against telephone companies and certified telecommunications providers terminating or refusing to reinstate

service except as allowed under the public utility laws.

The bill allows an affected person, including a municipality where a potential broadband service customer resides, or OSB, to seek enforcement of these requirements by filing a complaint with PURA.

### **§ 23 — SERVICE TERMINATIONS FOR DELINQUENT PAYMENTS**

The bill prohibits broadband providers from terminating service because of delinquent payments:

1. on a Friday, Saturday, Sunday, legal holiday, or day before a legal holiday (unless it is for a nonresidential account on a Friday that is not a holiday or day before a holiday and the provider is open the next day);
2. when the provider's business office is closed to the public; or
3. less than one hour before the provider's business office closes to the public.

Current law prohibits other utility companies from stopping service because of delinquent payments during the same times.

### **§ 24 — STATE BUILDING CODE**

The bill requires the state building inspector and the Codes and Standards Committee to revise the State Building Code so that it requires buildings that qualify as a new construction or a major alteration of a commercial or multi-family building to include a minimum infrastructure requirement to support broadband service. The inspector and committee must define these requirements in the revisions. The bill does not establish a deadline for this revision.

## **BACKGROUND**

### ***Certified Competitive Video Service Provider***

By law, a certified competitive video service provider is an entity providing video service under a PURA-issued certificate of video franchise authority (e.g., AT&T's U-Verse service) (CGS § 16-1(a)(41)). A certificate of video franchise authority grants the right to own, lease,

maintain, operate, manage, or control facilities in, under or over any public highway to offer video service to any subscribers in the state (CGS § 16-1(a)(42)).

***Certificate of Cable Franchise Authority***

By law, a certificate of cable franchise authority is a PURA-issued authorization giving a cable-TV company the right to own, lease, maintain, operate, manage or control a cable-TV system in, under or over any public highway to (a) offer cable-TV service in its designated franchise area, or (b) use the public rights-of-way to offer video service in a designated franchise area (CGS § 16-1(a)(43)).

***Certified Telecommunications Provider***

By law, a certified telecommunications provider is an entity certified by PURA to provide intrastate telecommunications services (CGS § 16-1(a)(32)).

**COMMITTEE ACTION**

Energy and Technology Committee

Joint Favorable

Yea 19      Nay 7      (03/18/2021)