

I MINA' TRENTAI UNU NA LIHESLATURAN GUÅHAN
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Bill No. 43-31(COR)

Introduced by:

V. A. Ada
R.J. Respicio

**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.**

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

2

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

5

Chapter 81

6

Broadband and Telecommunications Deployment Act of

7

2010

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Article 1

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Deployment on Public Rights of Way

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§81101. Short Title. This Article shall be known as the “Broadband and
11 Telecommunications Deployment Act of 2011.”

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§81102. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds
14 that all fifty states and the FCC are struggling with the challenge to bring
15 broadband internet and advanced telecommunications services to all areas
16 of the country. Nationwide, all internet service providers have found it

1 difficult to service remote or sparsely populated areas without incurring
2 significant infrastructure costs. In recent years, as urban populations
3 grew, internet service providers have found it necessary to replace
4 outdated infrastructure within crowded cities to keep up with the demand
5 for services from business, government and individual customers.
6 Similar issues will continually affect Guam consumers. While
7 competition continues to moderate prices, all consumers of broadband
8 services are faced with the reality of the high cost associated with
9 bringing bandwidth more than 6,000 miles from the west coast of the
10 United States. While little can be done in terms of local control to lower
11 the costs of connectivity to the US mainland, the Government of Guam
12 can do its share to keep costs down between internet service providers
13 and individual homes by not profiting off the use of rights-of-way for
14 broadband deployment.

15
16 *I Liheslatura* recognizes that the government of Guam has an important
17 role in managing the public rights-of-way and public lands and
18 waterways within its jurisdiction and control. While recognizing this
19 important governmental function, *I Liheslatura* also finds that prompt,
20 non-discriminatory access to public rights-of-way (as defined herein) by
21 telecommunications and broadband providers on reasonable terms and
22 conditions, including reasonable fees, is essential to facilities-based
23 competition, the deployment of advanced telecommunications and
24 broadband networks, and the implementation of network redundancy
25 necessary to protect against network outages and to ensure the safety and
26 security of the public. Accordingly, in enacting the Broadband and

1 Telecommunications Deployment Act, *I Liheslatura*, while preserving the
2 authority of governmental agencies of the government of Guam to
3 manage the public rights-of-way under their jurisdiction or control, seeks
4 to provide greater clarity regarding conditions and fees that can lawfully
5 be imposed on telecommunications providers relating to their use of such
6 public rights-of-way. *I Liheslatura* thus seeks to ensure that the practices
7 of governmental units with respect to access to these public rights-of-way
8 for the installation of telecommunications facilities do not go beyond
9 legitimate management activities and do not create barriers to the
10 deployment of advanced telecommunications and broadband networks.

11
12 To encourage the rapid deployment of advanced telecommunications and
13 broadband networks, while recognizing the role of the government in
14 managing the public rights-of-way within their jurisdiction, *I Liheslatura*
15 finds and declares all of the following:

16
17 (a) all entities providing local, interstate or international
18 telecommunications or telecommunications services or deploying
19 facilities to be used directly or indirectly in the provision of such services
20 shall have access to and use of all public rights-of-way within Guam in
21 connection with the construction and operation of their networks;

22
23 (b) that governmental agencies controlling such rights-of-way shall issue
24 permits for access to and use of public rights-of-way within a fixed and
25 reasonable time to telecommunications providers, not to exceed thirty
26 (30) days from the date of application for such permit, and that no

1 additional authorization, franchise or agreement may be required for
2 access to public rights-of-way;

3
4 (c) that revenue-based fees and excessive per-foot charges are a barrier to
5 deployment, and that fees shall be limited to the actual and direct costs
6 associated with managing the public rights-of-way, as further discussed
7 in this Article.

8
9 (d) that governmental agencies shall not be permitted to use control over
10 public rights-of-way to impose an additional tier of regulation on
11 providers or to require terms and conditions that are unrelated to the
12 actual management of the public rights-of-way;

13
14 (e) that reasonable limits shall be placed on certain management-related
15 permit terms, including those relating to indemnification and bonding
16 requirements;

17
18 (f) that departments, agencies, and instrumentalities of the government of
19 Guam shall not discriminate in their treatment of providers over the terms
20 and conditions of access to public rights-of-way; and

21
22 (g) that telecommunications providers shall have the ability to obtain
23 expedited relief from the PUC for rights-of-way practices that are
24 inconsistent with this Article, and bring existing permits and
25 authorizations into compliance with this Article.

26

1 **§81103. Definitions. As used in this Article:**

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

5
6 (b) “Public rights-of-way” means, for purposes of this Article, the surface
7 and the area across, in, over, along, upon and below the surface of the
8 public streets, roads, bridges, sidewalks, easements, lanes, courts, ways,
9 alleys, and boulevards, including, public lands and waterways used as
10 public rights-of-way, as the same now or may thereafter exist, which are
11 under the jurisdiction or control of a governmental Agency.

12
13 (c) “Telecommunications” means, for purposes of this Article, the
14 transmission, between or among points specified by the user, of
15 information of the user’s choosing, without change in the form or content
16 of the information as sent and received. For purposes of this Chapter,
17 this definition includes information sent and received by cable television
18 companies.

19
20 (d) “Telecommunications facilities” means, for purposes of this Article,
21 facilities and equipment, including without limitation, cable, fiber,
22 conduit, ducts, poles, cabinets, vaults, handholes, manholes, and other
23 associated equipment and appurtenances, used directly or indirectly in the
24 provision of telecommunications or telecommunications services. For
25 purposes of this Chapter, this definition includes facilities owned or
26 leased by cable television companies.

1
2 (e) “Telecommunications provider” or “provider” means, for purposes of
3 this Article, a person, or an affiliate of the person, which provides local,
4 interstate, or international telecommunications or telecommunication
5 services or installs facilities used directly or indirectly in the provision of
6 such telecommunications or telecommunications services. For purposes
7 of this Chapter, this definition includes cable television companies.
8

9 **§81104. Authorization to Use Public Rights-of-Way; Grant of**
10 **Construction Permit.**

11
12 (a) Telecommunications providers may access and use all public rights-
13 of-way within Guam for the construction, maintenance, upgrade, repair,
14 replacement, and removal of telecommunications facilities, in such
15 manner that does not unreasonably incommode the public use of any such
16 public rights-of-way.
17

18 (b) A governmental agency shall issue to telecommunications providers a
19 construction permit for access to and for the ongoing use of public rights-
20 of-way within its jurisdiction or control for the placement of
21 telecommunications facilities. The governmental agency shall act upon a
22 request by a telecommunications provider for a construction permit
23 governing access to and use of any public rights-of-way within its
24 jurisdiction or control within thirty (30) days of the date the
25 telecommunications provider files an application for such permit.
26

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

9
10 (d) A governmental agency may require a telecommunications provider
11 that places or seeks to place telecommunications facilities in the public
12 rights-of-way within its jurisdiction or control to register with the
13 governmental agency provided that, in doing so, the information required
14 is limited to the name of the registrant; name, address, and telephone
15 number of a contact person for the registrant; and proof of insurance or
16 self-insuring status adequate to defend and cover claims.

17
18 (e) This section does not require any telecommunications provider that, as
19 of the Effective Date, occupies, or has obtained the consent of a
20 governmental agency to use the public rights-of-way within its
21 jurisdiction or control for the placement of existing telecommunications
22 facilities to apply for the additional or continued consent of the local
23 governmental agency for such facilities.

24
25 (f) Structures or vaults of up to Ten feet by Sixteen Feet (10 feet X 16
26 feet) housing telecommunications and related equipment may be placed

1 in rights of way so long as the structures are not placed on main
2 highways, do not impede the vision of drivers and no plans for widening
3 roads within five years exist where the structures are sited. In the event
4 that road widening or development necessitates movement of the
5 structures, all relocation costs shall be born by the telecommunications
6 provider.

7
8 **§81105. Regulations and Fees Relating to Occupation of Public**
9 **Rights-of-Way; Performance Bonds and Indemnification.**

10
11 (a) Any rules or regulations adopted by a governmental agency which
12 govern access to or use of its public rights-of-way by telecommunications
13 providers, and any conditions of a permit granted under this Section or
14 application requirements for such permit, shall (1) be competitively
15 neutral and nondiscriminatory as to all providers; and (2) relate directly to
16 the management and direct and demonstrable effects of a provider's
17 access to and use of such public rights-of-way.

18
19 (b) A governmental agency shall not use its authority under this Section
20 as a basis to exercise regulatory control or jurisdiction over a provider's
21 operations, systems, technical, legal or financial qualifications, services,
22 service quality, service territory, rates, or other business activities.

23
24 (c) A telecommunications provider shall not be required to waive its right
25 to judicial or administrative review or any other remedies as a condition
26 of obtaining a permit or of accessing and using the public rights-of-way.

1 Any waiver of such rights shall be void as against public policy. A
2 telecommunications provider's agreement to, or negotiation of, a permit
3 or any conditions contained therein, shall not be deemed such a waiver.
4

5 (d) Any fee required by a governmental agency relating to public rights-
6 of-way, utility poles and permitted encroachments shall be imposed on a
7 nondiscriminatory and competitively neutral basis and shall not exceed
8 the actual and direct costs incurred by the governmental agency in issuing
9 and administering the permit for access or use. A governmental agency
10 may not impose other non-monetary compensation on the provider in
11 connection with its access to and use of the public rights-of-way, such as
12 the use or provision of telecommunications facilities, the provision of
13 telecommunications services, or the use or provision of any other goods
14 or service. Such fees shall not exceed fees charged for such uses or
15 access shall not exceed the fees charged as of December 31, 2009.
16

17 (e) Performance Bonds.
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19 (1) A governmental agency may require a telecommunications provider to
20 provide an individual project performance bond naming the governmental
21 agency as an obligee for the cost to restore the public rights-of-way to its
22 condition prior to the provider's construction of the telecommunications
23 facilities in the public rights-of-way under a permit. In the event that the
24 governmental agency requires such a performance bond, the bond shall
25 not exceed the provider's good faith estimate of the cost to restore the
26 public rights-of-way to its condition prior to the construction of such

1 telecommunications facilities in the public rights-of-way. The
2 performance bond shall terminate thirty (30) days following completion
3 of restoration of the affected public rights-of-way but no later than one
4 year past the completion of restoration. If a governmental agency requires
5 a telecommunications provider to provide a construction bond at the
6 onset of an individual project, once the construction is complete the
7 construction bond may revert to 10% of the construction bond amount to
8 satisfy maintenance and restoration.

9
10 (2) The governmental agency shall allow a telecommunications provider,
11 at its option, to provide a blanket bond covering multiple projects, in
12 which case an individual project performance bond may only be required
13 for the construction of telecommunications facilities in public rights-of-
14 way under a permit to the extent that the reasonable estimate of
15 restoration costs for that project and all other projects covered by the
16 blanket bond exceeds the amount of the blanket bond. A bond shall not
17 be required where the governmental agency determines it is not necessary
18 to secure restoration considering, without limitation, the amount of
19 restoration for the project, or the telecommunications provider's ability to
20 cover any claims without the need for security in the form of a bond,
21 including through the provision of self-insurance in a form acceptable to
22 the governmental agency.

23
24 (3) Except as provided in this subsection, a governmental agency shall
25 not require a performance bond or other security from a
26 telecommunications provider in connection with its access to and use of

1 the public rights-of-way. The foregoing limitation shall not apply to the
2 proof of insurance that may be required pursuant to §81104(d) of this
3 Article.

4
5 (f) Indemnification.

6
7 (1) A governmental agency shall have authority to include in a permit a
8 provision requiring the telecommunications provider to defend,
9 indemnify, and hold harmless the governmental agency from liabilities,
10 damages, costs, and expenses, including reasonable attorney's fees,
11 arising from injury to person or property proximately caused by the acts
12 or omissions of the telecommunications provider in connection with its
13 access to or use of the public rights-of-way.

14
15 (2) Any such provision shall: (a) require the governmental agency to
16 promptly notify the telecommunications provider of any claims, demands,
17 or actions ("Claims") covered by such provision; (b) provide the
18 telecommunications provider with the right to defend and compromise
19 such claims, and require the governmental agency to cooperate in the
20 defense of such Claims; and (c) not apply to Claims arising from the
21 negligent, willful or other acts of the governmental agency, its employees
22 or agents, except to the extent such Claims arise from the joint negligence
23 of the telecommunications provider and governmental agency, in which
24 case, the amount of the Claims for which the governmental agency shall
25 be entitled to indemnification shall be limited to that portion attributable
26 to the actions of the telecommunication provider.

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(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.

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

9
10 **§81107. Exempt Properties**

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

15
16 **§81108. Severability**

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

22
23 **§81109. Effective Date**

24 This Article will become effective upon enactment.
25
26

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

3
4 (i) Structures housing utility equipment, including telecommunications
5 equipment and back up generation, so long as the structures are no
6 greater than 200 square feet in area.

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8
9 **Section 3. Exception for Nonconforming Buildings and**
10 **Nonconforming Use of Land.** A new Section (d) is *added* to Title 21,
11 GCA, 56 1526 as follows:

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