

By: Paddie, et al.

H.B. No. 1505

Substitute the following for H.B. No. 1505:

By: Paddie

C.S.H.B. No. 1505

A BILL TO BE ENTITLED

1 AN ACT
2 relating to attachments for broadband service on utility poles
3 owned by an electric cooperative.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The heading to Chapter 252, Utilities Code, is
6 amended to read as follows:

7 CHAPTER 252. CABLE ATTACHMENTS TO ELECTRIC COOPERATIVE'S
8 DISTRIBUTION POLES

9 SECTION 2. Title 5, Utilities Code, is amended by adding
10 Chapter 253 to read as follows:

11 CHAPTER 253. BROADBAND ATTACHMENTS TO ELECTRIC COOPERATIVE'S
12 DISTRIBUTION POLES

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 253.0001. DEFINITIONS. In this chapter:

15 (1) "Broadband provider" means an entity that provides
16 broadband service either directly or through an affiliate that uses
17 the entity's communications facilities, regardless of whether the
18 entity:

19 (A) provides additional services in addition to
20 broadband service; or

21 (B) uses its facilities in whole or in part to
22 provide broadband service.

23 (2) "Broadband service" means Internet service with
24 the capability of providing:

1 (A) a download speed of 25 megabits per second or
2 faster; and

3 (B) an upload speed of three megabits per second
4 or faster.

5 (3) "Pole" has the meaning assigned by Section
6 252.001.

7 (4) "Pole attachment" means an affixture of cables,
8 strands, wires, and associated equipment used in the provision of a
9 broadband provider's services attached to a pole directly or
10 indirectly or placed in a right-of-way owned or controlled by an
11 electric cooperative.

12 Sec. 253.0002. APPLICABILITY. This chapter applies to a
13 pole attachment affixed by a broadband provider to a pole owned and
14 controlled by an electric cooperative. This chapter does not apply
15 to a pole attachment regulated by the Federal Communications
16 Commission under 47 U.S.C. Section 224.

17 Sec. 253.0003. CONSTRUCTION OF CHAPTER. (a) This chapter
18 does not abrogate or affect a right or obligation of a party to a
19 pole attachment contract entered into by a broadband provider and
20 an electric cooperative before September 1, 2021.

21 (b) This chapter does not limit a right of a party to a pole
22 attachment contract to request modification, amendment, or renewal
23 of such contract to conform it to the provisions of this chapter.

24 Sec. 253.0004. NO STATE CERTIFICATION; NO REGULATORY
25 AUTHORITY. (a) This chapter does not constitute state
26 certification under 47 U.S.C. Section 224. If a court determines
27 that this chapter constitutes certification under that section,

1 this chapter is not enforceable and has no effect.

2 (b) This chapter may not be construed to subject an electric
3 cooperative to regulation by the Federal Communications Commission
4 under 47 U.S.C. Section 224.

5 (c) This chapter does not authorize a department, agency, or
6 political subdivision of this state to exercise enforcement or
7 regulatory authority over attachments to electric cooperative
8 poles.

9 Sec. 253.0005. CONSTRUCTION OF TERMS AND PHRASES.
10 Technical terms and phrases in this chapter, other than those
11 defined by Section 253.0001, shall be construed using the term's or
12 phrase's usual and customary meanings in the electric and broadband
13 industries.

14 Sec. 253.0006. COST-BASED NONRECURRING CHARGES.
15 Nonrecurring charges authorized by this chapter must be cost-based.

16 SUBCHAPTER B. ACCESS TO POLES

17 Sec. 253.0101. APPLICATION FOR POLE ACCESS. A broadband
18 provider may not access a pole owned by an electric cooperative for
19 the purpose of placing a pole attachment unless the provider
20 applies for that access.

21 Sec. 253.0102. USE OF POLE ATTACHMENTS FOR MULTIPLE
22 SERVICES. A broadband provider that attaches a pole attachment
23 under this chapter may use the attachment for any service delivered
24 over the provider's facilities, including cable service.

25 Sec. 253.0103. MODIFICATION OR REPLACEMENT TO ACCOMMODATE
26 ATTACHMENT. (a) Notwithstanding Section 253.0201, an electric
27 cooperative may not deny access to a pole if a capacity, safety,

1 reliability, or engineering consideration that would supply a basis
2 for denial of access under 47 U.S.C. Section 224(f)(2) or any rule,
3 regulation, or order issued by the Federal Communications
4 Commission under that section may be remedied by rearranging,
5 expanding, replacing, or otherwise safely reengineering the pole or
6 pole attachments through make-ready activities.

7 (b) An electric cooperative granting access under
8 Subsection (a) shall rearrange, expand, replace, or otherwise
9 safely reengineer any pole if to do so is:

10 (1) reasonably necessary to accommodate a pole
11 attachment; and

12 (2) consistent with applicable safety and engineering
13 standards as authorized under Section 253.0201.

14 SUBCHAPTER C. POLE ATTACHMENT CONTRACTS

15 Sec. 253.0201. CONTRACTS FOR POLE ATTACHMENTS. (a) An
16 electric cooperative that owns a pole may require a broadband
17 provider that attaches a pole attachment to the pole under this
18 chapter to enter into a contract for access to the pole.

19 (b) Notwithstanding 47 U.S.C. Section 224(a)(1), except as
20 provided by this chapter, the terms and conditions of a contract
21 required under Subsection (a) must be consistent with:

22 (1) 47 U.S.C. Section 224, as that section existed on
23 April 1, 2021; and

24 (2) any rule, regulation, or order issued by the
25 Federal Communications Commission under 47 U.S.C. Section 224, as
26 the rule, regulation, or order existed on April 1, 2021.

27 (c) The terms and conditions of a contract required under

1 Subsection (a) are not required to be consistent with the statutes,
2 rules, regulations, or orders described by Subsection (b) if the
3 terms and conditions address recurring pole rental rates.

4 Sec. 253.0202. RATES, TERMS, AND CONDITIONS FOR POLE
5 ATTACHMENT. (a) A broadband provider and an electric cooperative
6 shall establish the rates, terms, and conditions for pole
7 attachments by a written pole attachment contract executed by both
8 parties.

9 (b) The terms and conditions of a contract under this
10 chapter must comply with Section 253.0201.

11 (c) The rates for attachments by a broadband provider on an
12 electric cooperative's poles must be just, reasonable, and
13 nondiscriminatory. In determining whether rates are just and
14 reasonable, the following factors must be considered:

15 (1) the interests of and benefits to the consumers and
16 potential consumers of the electric cooperative's services;

17 (2) the interests of and benefits to the subscribers
18 and potential subscribers to broadband services offered through the
19 pole attachments;

20 (3) the interests of and benefits to third parties
21 from the availability of broadband services offered through the
22 pole attachments;

23 (4) compliance with the specifications in the National
24 Electrical Safety Code, applicable fire safety codes, and any
25 building code or similar code of general applicability for the
26 protection of public health, safety, or welfare applicable to the
27 pole attachments; and

1 (5) the maintenance and reliability of both electric
2 distribution and broadband services.

3 (d) A broadband provider and an electric cooperative shall
4 negotiate a pole attachment contract and any amendment,
5 modification, or renewal thereof in good faith.

6 (e) A request to negotiate a new pole attachment contract or
7 to amend, modify, or renew a contract pertaining to pole
8 attachments by a broadband provider or an electric cooperative must
9 be made in writing.

10 Sec. 253.0203. CONTRACT NEGOTIATIONS AND MEDIATION. (a)
11 If a broadband provider and an electric cooperative are unable to
12 agree to a new pole attachment contract before the expiration date
13 of an existing contract, the rates, terms, and conditions of the
14 existing contract and the terms and conditions of the electric
15 cooperative's application and permitting processes remain in
16 force:

17 (1) during the 90-day negotiation period described by
18 Subsection (b) and during the period of any agreed extension;

19 (2) during the 60-day mediation period described by
20 Subsection (b) and during the period of any agreed extension; and

21 (3) pending final disposition of any litigation
22 commenced under Subsection (c).

23 (b) If a broadband provider and an electric cooperative are
24 unable to agree to a new pole attachment contract before the 91st
25 day after the expiration date of an existing contract, and are
26 unable to agree to an extension of the negotiation period for a
27 certain number of days, the broadband provider and electric

1 cooperative shall attempt to resolve any disagreement over the
2 rates, terms, or conditions by submitting the contract negotiations
3 to a mediation process. The mediation process may not extend later
4 than the 60th day after the end of the initial 90-day negotiation
5 period and any agreed extension of that period unless the broadband
6 provider and electric cooperative agree to an extension of the
7 mediation period for a certain number of days. The mediation
8 process must be conducted in a county in which the electric
9 cooperative has distribution poles. The broadband provider and
10 electric cooperative must share equally the expenses for the
11 mediator.

12 (c) If the mediation process under Subsection (b) does not
13 resolve the disagreement over the rates, terms, or conditions of a
14 new pole attachment agreement, or if a dispute arises under the
15 terms of an existing agreement or the requirements of this chapter,
16 the broadband provider or electric cooperative may file suit in a
17 district court to resolve the disagreement or dispute, including to
18 enforce the terms of the agreement or of this chapter.

19 SUBCHAPTER D. POLE REPLACEMENT

20 Sec. 253.0301. RECOVERY OF COSTS FOR REPLACING POLES. (a)
21 Except as provided by this section, an electric cooperative that
22 replaces a pole shall assess charges for the replacement from a
23 broadband provider consistent with:

24 (1) 47 U.S.C. Section 224, as that section existed on
25 April 1, 2021; and

26 (2) any rules, regulations, or orders issued by the
27 Federal Communications Commission under 47 U.S.C. Section 224, on

1 or before April 1, 2021, as the rule, regulation, or order existed
2 on that date.

3 (b) The Public Utility Commission of Texas shall adopt and
4 enforce rules regarding the compensation that an electric
5 cooperative may require from a broadband provider to replace a pole
6 if:

7 (1) 47 U.S.C. Section 224, as that section existed on
8 April 1, 2021, is amended in a manner that pertains to the charges
9 that may be assessed by a pole owner for a pole replacement; or

10 (2) a rule, regulation, or order issued by the Federal
11 Communications Commission under 47 U.S.C. Section 224, on or before
12 April 1, 2021, that pertains to the charges that may be assessed by
13 a pole owner for a pole replacement is repealed, amended, or
14 replaced after April 1, 2021.

15 (c) The Public Utility Commission of Texas must adopt rules
16 under Subsection (b) not later than the 180th day after the date
17 that an amendment, repeal, or replacement described by that
18 subsection takes effect.

19 (d) A rule adopted under Subsection (b) must be just,
20 reasonable, and nondiscriminatory. In adopting the rules, the
21 commission shall consider:

22 (1) the significance and persuasiveness of the changes
23 to federal law;

24 (2) the interests of electric cooperatives, broadband
25 providers, their respective customers and potential customers, and
26 the public; and

27 (3) when just and reasonable, the importance of

1 maintaining consistency in the terms and conditions governing
2 attachment to poles owned by electric cooperatives and poles owned
3 by investor-owned utilities.

4 SUBCHAPTER E. ADDITIONAL POLE ATTACHMENT REQUIREMENTS

5 Sec. 253.0401. TRANSFER OF ATTACHMENTS. (a) Before an
6 electric cooperative installs a new pole to replace an existing
7 pole due to the rerouting, maintenance, or upgrading of the
8 electric distribution system, the cooperative shall provide notice
9 of the replacement to each broadband provider with a pole
10 attachment on the existing pole.

11 (b) The notice required under Subsection (a) must specify a
12 date by which the broadband provider must remove the pole
13 attachment from the existing pole and transfer the attachment to
14 the new pole.

15 (c) If a broadband provider does not transfer a pole
16 attachment to the new pole before the 31st day after the date
17 specified in the notice, the electric cooperative may transfer the
18 pole attachment to the new pole at the broadband provider's
19 expense, including the cost for the electric cooperative to return
20 to the site.

21 (d) A broadband provider shall indemnify, defend, and hold
22 harmless an electric cooperative and the cooperative's members,
23 directors, officers, agents, and employees from and against all
24 liability for the removal and transfer of a pole attachment subject
25 to this section, except for personal injury or property damage
26 arising from the gross negligence or wilful misconduct of the
27 electric cooperative during the removal and transfer process.

1 Sec. 253.0402. ABANDONED POLE ATTACHMENTS; REMOVAL. (a) A
2 broadband provider that receives a written request from an electric
3 cooperative to remove an abandoned pole attachment owned by the
4 provider from a pole owned by the cooperative shall remove the
5 attachment not later than the 60th day after the date the provider
6 receives the request.

7 (b) Before the deadline under Subsection (a), a broadband
8 provider may request, and an electric cooperative may grant, a
9 reasonable extension of that deadline. A request for an extension
10 under this subsection must be in writing.

11 (c) If a broadband provider does not remove a pole
12 attachment by the deadline under Subsection (a) or an extended
13 deadline under Subsection (b), the electric cooperative may remove,
14 use, sell, or dispose of the pole attachment at the broadband
15 provider's expense.

16 (d) An electric cooperative may require that a broadband
17 provider post a security instrument in an amount reasonably
18 sufficient to cover the potential cost to the electric cooperative
19 of removal and disposal of abandoned pole attachments.

20 (e) A broadband provider shall indemnify, defend, and hold
21 harmless an electric cooperative and the cooperative's members,
22 directors, officers, agents, and employees from and against all
23 liability for the removal, use, sale, or disposal of abandoned pole
24 attachments, except for personal injury or property damage arising
25 from the gross negligence or wilful misconduct of the electric
26 cooperative during the removal and disposal process.

27 Sec. 253.0403. EASEMENTS; INDEMNITY. (a) A broadband

1 provider is responsible for obtaining all rights-of-way and
2 easements necessary for the installation, operation, and
3 maintenance of the provider's pole attachments.

4 (b) An electric cooperative is not required to obtain or
5 expand a right-of-way or easement to accommodate a pole attachment
6 requested by a broadband provider.

7 (c) An electric cooperative is not liable if a broadband
8 provider is prevented from placing or maintaining a pole attachment
9 because the broadband provider did not obtain a necessary
10 right-of-way or easement.

11 (d) A broadband provider shall indemnify, defend, and hold
12 harmless the electric cooperative and the cooperative's members,
13 directors, officers, agents, and employees from and against any
14 liability resulting from the broadband provider's failure to obtain
15 a necessary right-of-way or easement for a pole attachment.

16 SECTION 3. This Act takes effect September 1, 2021.