

By: Turner

H.B. No. 2710

A BILL TO BE ENTITLED

AN ACT

relating to cable attachments to electric facilities of electric cooperatives.

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

SECTION 1. Subtitle B, Title 2, Utilities Code, is amended by adding Chapter 44 to read as follows:

CHAPTER 44. BROADBAND DEPLOYMENT AND FAIR ACCESS TO ELECTRIC COOPERATIVE FACILITIES

Sec. 44.001. DEFINITIONS. In this chapter:

(1) "Cable attachment" means any attachment by a cable company to an electric facility.

(2) "Cable company" means a cable operator as defined in 47 U.S.C. Section 522(5), regardless of the nature of the services offered or provided.

(3) "Electric cooperative" has the meaning assigned by Section 161.002(4).

(4) "Electric facility" means any pole, duct, conduit, or right-of-way owned or controlled by an electric cooperative.

(5) "Make-ready" means all work necessary or appropriate to make space for or otherwise accommodate new, additional, or changed cable attachments, including necessary or appropriate rearrangements, removal and replacement of the electric facility or cable attachments, and other related work.

Sec. 44.002. ACCESS REQUIREMENTS. An electric cooperative

1 shall provide a cable company with access to all of the electric
2 cooperative's electric facilities using just, reasonable,
3 cost-based, and nondiscriminatory rates, terms, and conditions.

4 Sec. 44.003. APPROVAL OR DENIAL OF CABLE ATTACHMENT
5 REQUEST. (a) An electric cooperative shall approve or deny in
6 writing a cable attachment request no later than the 15th business
7 day after the request is received from the cable company.

8 (b) If make-ready by the electric cooperative is required in
9 order to grant the cable attachment request, an estimate for the
10 make-ready costs shall be provided to the cable company that
11 submitted the cable attachment request at the same time the
12 electric cooperative provides written notice of the approval or
13 denial of the cable attachment request. The cable company shall
14 provide written notice to the electric cooperative indicating
15 whether or not the cable company consents to the make-ready cost
16 estimate provided by the electric cooperative.

17 (c) The denial of a cable attachment request must include,
18 in sufficient detail, the grounds for the denial. The grounds for
19 the denial must be in accordance with this section.

20 (d) Except as provided by Subsection (e), an electric
21 cooperative may deny a cable company access to its electric
22 facilities on a nondiscriminatory basis:

23 (1) if there is insufficient capacity; or
24 (2) for reasons of safety, reliability, or generally
25 applicable engineering principles.

26 (e) An electric cooperative may not deny a cable company
27 access to its electric facilities on the ground that there is

insufficient capacity or for reasons of safety, reliability, or generally applicable engineering principles if:

(1) the grounds for denial specified by the electric cooperative can be remedied by setting a new pole or other electric facility or by rearranging or otherwise reengineering the electric facilities; and

(2) the cable company that submitted the cable attachment request agrees to pay the reasonable, actual, and verifiably comparable costs of:

(A) setting a new pole or other electric facility; or

(B) rearranging or otherwise reengineering the electric facilities to resolve capacity, safety, reliability, or engineering issues specified by the electric cooperative in its denial of a cable attachment request.

Sec. 44.004. MAKE-READY COSTS AND WORK. (a) A cable company with an existing cable attachment to the electric cooperative's electric facilities is not required to bear any of the costs of make-ready with regard to its cable attachment if such make-ready is required as the result of an additional attachment or adjustment of an existing attachment sought by another entity or the electric cooperative.

(b) If make-ready is required by an electric cooperative to accommodate the cable attachment of a cable company that submitted a cable attachment request approved by the electric cooperative, the electric cooperative must begin the make-ready work no later than the 20th business day after the electric cooperative receives

the cable company's written consent to the electric cooperative's make-ready cost estimate. The electric cooperative shall use its best efforts to complete all make-ready work no later than the 60th business day after receiving the cable company's written consent to the electric cooperative's make-ready cost estimate.

Sec. 44.005. TERMS OF CABLE ATTACHMENT AGREEMENT. (a) Following receipt of a request from a cable company to enter into a cable attachment agreement, an electric cooperative shall negotiate in good faith the rates, terms, and conditions for access to and use of the electric facilities.

(b) A cable company and an electric cooperative that are parties to an existing cable attachment agreement shall negotiate in good faith the rates, terms, and conditions for the cable company's continued access to the electric cooperative's electric facilities if a written request to negotiate is submitted to the electric cooperative by the cable company or to the cable company by the electric cooperative:

(1) pursuant to the terms of the existing agreement;
(2) no sooner than the 120th day before the end of the term of the existing agreement; or

(3) no later than the 120th day following the expiration of the term of the existing agreement.

(c) A cable company or electric cooperative may file an action with the commission if:

(1) the parties are unable to reach agreement for a new or revised cable attachment agreement by the 90th day following receipt by either party of a written request to negotiate from the

1 other party; or

2 (2) either party believes in good faith that an
3 impasse has been reached before the 90th day following receipt by
4 either party of a written request to negotiate from the other party.

5 (d) All rates, including rent, fees, and charges demanded,
6 invoiced, or assessed by an electric cooperative, shall be just,
7 reasonable, cost-based, and nondiscriminatory. An electric
8 cooperative may not charge a cable company, regardless of the
9 nature of the services provided by that cable company, a cable
10 attachment rate or conduit rate that exceeds the rate the electric
11 cooperative would be permitted to charge under rules adopted by the
12 Federal Communications Commission under 47 U.S.C. Section 224(d) if
13 the electric cooperative were regulated under federal law and the
14 rules of the Federal Communications Commission.

15 (e) Rates may not be increased more often than once annually
16 and then only if:

17 (1) the cable attachment agreement between the
18 electric cooperative and the cable company allows for such
19 increases; and

20 (2) the electric cooperative provides the cable
21 company with written notice containing the justification for the
22 proposed increase at least 60 days before the proposed increase
23 goes into effect.

24 (f) An electric cooperative shall provide a cable company
25 written notice at least 180 days before removing the cable
26 company's cable attachments to an electric facility or terminating
27 any service to the electric facility as the result of a breach of a

1 rate, term, or condition of a cable attachment agreement. If a
2 breach of a rate, term, or condition of a cable attachment agreement
3 alleged by the electric cooperative is disputed by a cable company,
4 the cable company may file an action with the commission to contest
5 the decision of the electric cooperative to remove the cable
6 company's cable attachments or terminate any service to the
7 electric facility.

8 (g) All other terms and provisions of any agreement between
9 an electric cooperative and a cable company governing or affecting
10 a cable company's cable attachments, including any rate, term, or
11 condition governing audits, inspections, termination,
12 indemnification, security bond, and insurance requirements, shall
13 be just, reasonable, and consistent with the provisions of this
14 chapter.

15 Sec. 44.006. COMMISSION AUTHORITY AND JURISDICTION. (a)
16 Notwithstanding any other law, the commission has jurisdiction to
17 enforce this chapter.

18 (b) Any electric cooperative or cable company that is
19 aggrieved by conduct of another party that is in violation of this
20 chapter may file a complaint with the commission.

21 (c) The commission shall resolve any dispute brought by a
22 party under this chapter consistent with the public interest and
23 this chapter, taking into consideration and applying such factors
24 and evidence that may be presented by a party, including the rules
25 and regulations applicable to cable attachments under 47 U.S.C.
26 Section 224, or the rules and regulations of any state certified to
27 regulate cable attachments under 47 U.S.C. Section 224(c).

1 Sec. 44.007. APPLICABILITY AND ENFORCEABILITY. (a) This
2 chapter shall not apply to any cable attachment regulated by the
3 Federal Communications Commission under 47 U.S.C. Section 224.

4 (b) This chapter does not constitute state certification
5 under 47 U.S.C. Section 224(c). If a court of competent
6 jurisdiction determines that this chapter is tantamount to
7 certification, this chapter has no effect and is not enforceable.

8 SECTION 2. This Act takes effect immediately if it receives
9 a vote of two-thirds of all members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September, 1, 2011.