

1-1 By: Cook (Senate Sponsor - Carona) H.B. No. 3355  
1-2 (In the Senate - Received from the House May 6, 2013;  
1-3 May 8, 2013, read first time and referred to Committee on Business  
1-4 and Commerce; May 14, 2013, reported favorably by the following  
1-5 vote: Yeas 9, Nays 0; May 14, 2013, sent to printer.)

1-6 COMMITTEE VOTE

1-7	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to cable operators' attachments on distribution poles  
1-20 owned or controlled by electric cooperatives.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Title 5, Utilities Code, is amended by adding  
1-23 Chapter 252 to read as follows:

1-24 CHAPTER 252. ATTACHMENTS TO ELECTRIC COOPERATIVE'S DISTRIBUTION  
1-25 POLES

1-26 Sec. 252.001. DEFINITIONS. In this chapter:

1-27 (1) "Abandoned pole attachment" means a pole  
1-28 attachment:

1-29 (A) for which a cable operator has not paid, for a  
1-30 period of 90 consecutive days or more, an invoice for rental charges  
1-31 presented by an electric cooperative, unless there is a bona fide  
1-32 dispute over the invoice; or

1-33 (B) that is not removed after authority for the  
1-34 pole attachment has terminated or expired, subject to any extension  
1-35 period for negotiation and mediation described by Section  
1-36 252.005(c).

1-37 (2) "Cable operator" means an entity that owns or  
1-38 operates a cable system, as that term is defined by 47 U.S.C.  
1-39 Section 522, regardless of the nature of the services offered or  
1-40 provided by the entity in addition to cable services.

1-41 (3) "Pole" means a pole carrying distribution lines  
1-42 with a voltage rating no higher than 34.5 kilovolts.

1-43 (4) "Pole attachment" means an affixture of cables,  
1-44 strands, wires, and associated equipment attached to a pole  
1-45 directly or indirectly.

1-46 (5) "Security instrument" means a performance bond or  
1-47 an equivalent financial instrument that guarantees payments of  
1-48 amounts payable to an electric cooperative by a cable operator.

1-49 Sec. 252.002. APPLICABILITY. (a) This chapter applies to a  
1-50 pole attachment affixed by a cable operator to a pole owned and  
1-51 controlled by an electric cooperative. This chapter does not apply  
1-52 to a pole attachment regulated by the Federal Communications  
1-53 Commission under 47 U.S.C. Section 224.

1-54 (b) This chapter does not abrogate or affect a right or  
1-55 obligation of a party to a pole attachment contract entered into by  
1-56 a cable operator and an electric cooperative before September 1,  
1-57 2013.

1-58 Sec. 252.003. LIMITATION. (a) This chapter does not  
1-59 constitute state certification under 47 U.S.C. Section 224(c). If  
1-60 a court determines that this chapter constitutes certification  
1-61 under that section, this chapter is not enforceable and has no

effect.

(b) This chapter may not be construed to subject an electric cooperative to regulation by the Federal Communications Commission under 47 U.S.C. Section 224. This chapter does not authorize a department, agency, or political subdivision of the state to exercise enforcement or regulatory authority over attachments to electric cooperative poles.

Sec. 252.004. CONSTRUCTION. Unless defined by Section 252.001, the technical terms and phrases in this chapter shall be construed using their usual and customary meanings in the electric and cable industries.

Sec. 252.005. POLE ATTACHMENT CONTRACTS; ACCESS REQUIREMENTS. (a) A cable operator and an electric cooperative shall establish the rates, terms, and conditions for pole attachments, including the cooperative's application and permitting processes by a written pole attachment contract executed by both parties. The rates, terms, and conditions for attachments by a cable operator on an electric cooperative's poles must be just and reasonable.

(b) A cable operator and an electric cooperative shall negotiate a pole attachment contract in good faith.

(c) A request to negotiate a new pole attachment contract by a cable operator or an electric cooperative must be in writing. If a cable operator and an electric cooperative are unable to agree to a new pole attachment contract before the expiration date of an existing pole attachment contract, the rates, terms, and conditions of the existing pole attachment contract and the terms and conditions of the electric cooperative's application and permitting processes remain in force:

(1) during the 180-day negotiation period described by Subsection (d) and during the period of any agreed extension; and

(2) during the 90-day mediation period described by Subsection (d) and during the period of any agreed extension.

(d) If a cable operator and an electric cooperative are unable to agree to a new pole attachment contract before the 181st day after the expiration date of the existing pole attachment contract and are unable to agree to an extension of the negotiation period for a certain number of days, the cable operator and electric cooperative shall attempt to resolve any disagreement over the rates, terms, or conditions by submitting the contract negotiations to mediation. The mediation process may not extend later than the 90th day after the end of the 180-day negotiation period and any agreed extension of that period unless the cable operator and an electric cooperative agree to an extension of the mediation period for a certain number of days. The mediation process must be conducted in a county in which the electric cooperative has distribution poles. The cable operator and an electric cooperative must share the expenses for the mediator equally.

(e) If the mediation process does not resolve the disagreement over the rates, terms, or conditions, the cable operator or the electric cooperative may request that a court resolve the disagreement over the rates, terms, and conditions.

(f) Access to a pole may be denied where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

(g) In determining whether rates, terms, and conditions are just and reasonable, at least the following factors must be considered:

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

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

(3) compliance with applicable safety standards; and

(4) the maintenance and reliability of both electric distribution and cable services.

Sec. 252.006. TRANSFER OF ATTACHMENTS. (a) An electric cooperative shall provide a cable operator with notice when the electric cooperative is installing a new pole to replace an

existing pole to which a pole attachment is affixed due to the rerouting, maintenance, or upgrading of the electric distribution system. In the notice, the electric cooperative shall specify a date for the cable operator to remove its attachment from the existing pole and transfer the attachment to the new pole.

(b) If a cable operator does not transfer a pole attachment to the new pole on or before the 30th day after the date specified by the electric cooperative under Subsection (a), the electric cooperative may transfer the pole attachment to the new pole at the cable operator's expense, including the cost for the electric cooperative to return to the site.

(c) A cable operator shall indemnify, defend, and hold harmless the electric cooperative and the cooperative's members, directors, officers, agents, and employees from and against all liability for the removal and transfer of a pole attachment subject to this section, except for personal injury or property damage arising from gross negligence or wilful misconduct of the electric cooperative during the removal and transfer process.

Sec. 252.007. ABANDONED POLE ATTACHMENTS; REMOVAL. (a) A cable operator shall remove the operator's abandoned pole attachment from an electric cooperative's pole not later than the 60th day after the date the cable operator receives from the electric cooperative a written request for removal of the pole attachment. A cable operator may request an electric cooperative to extend for a reasonable period the 60-day period prescribed by this section at any time before the 60-day period expires. The request for an extension must be in writing. The electric cooperative may grant a cable operator a reasonable extension of time to remove an abandoned attachment.

(b) If a cable operator does not remove a pole attachment for which a request for removal was made under Subsection (a) before the expiration of the period described by that subsection or before the expiration of an extended period granted by the electric cooperative, the electric cooperative may remove, use, sell, or dispose of the pole attachment at the cable operator's expense.

(c) An electric cooperative may require that a cable operator post a security instrument in an amount reasonably sufficient to cover the potential cost to the electric cooperative of removal and disposal of abandoned pole attachments.

(d) A cable operator shall indemnify, defend, and hold harmless the electric cooperative and the cooperative's members, directors, officers, agents, and employees from and against all liability for the removal, use, sale, or disposal of abandoned pole attachments, except for personal injury or property damage arising from the gross negligence or wilful misconduct of the electric cooperative during the removal and disposal process.

Sec. 252.008. EASEMENTS; INDEMNITY. (a) A cable operator is responsible for obtaining all rights-of-way and easements necessary for the installation, operation, and maintenance of the operator's pole attachments.

(b) An electric cooperative is not required to obtain or expand a right-of-way or easement to accommodate a pole attachment requested by a cable operator.

(c) An electric cooperative is not liable if a cable operator is prevented from placing or maintaining a pole attachment because the cable operator did not obtain a necessary right-of-way or easement.

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

SECTION 2. Chapter 252, Utilities Code, as added by this Act, applies to a pole attachment contract entered into, or renewed or extended, by a cable operator and an electric cooperative on or after the effective date of this Act. A contract entered into by a cable operator and an electric cooperative before the effective date of this Act is governed by the law in effect on the date the contract is executed, and the former law remains in effect for that

4-1 purpose.

4-2 SECTION 3. This Act takes effect September 1, 2013.

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