87R17712 BRG-F

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

AN ACT

relating to attachments for broadband service on utility poles owned by an electric cooperative.

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

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

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

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

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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 253.0001.  DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER B. ACCESS TO POLES

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

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

Sec. 253.0103.  MODIFICATION OR REPLACEMENT TO ACCOMMODATE ATTACHMENT. (a) Notwithstanding Section 253.0201, an electric cooperative may not deny access to a pole if a capacity, safety, reliability, or engineering consideration that would supply a basis for denial of access under 47 U.S.C. Section 224(f)(2) or any rule, regulation, or order issued by the Federal Communications Commission under that section may be remedied by rearranging, expanding, replacing, or otherwise safely reengineering the pole or pole attachments through make-ready activities.

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

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

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

SUBCHAPTER C. POLE ATTACHMENT CONTRACTS

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

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

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

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

(c)  The terms and conditions of a contract required under Subsection (a) are not required to be consistent with the statutes, rules, regulations, or orders described by Subsection (b) if the terms and conditions address recurring pole rental rates.

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

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

(c)  The rates for attachments by a broadband provider on an electric cooperative's poles must be just, reasonable, and nondiscriminatory. In determining whether rates are just and reasonable, 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 to broadband services offered through the pole attachments;

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

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

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

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

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

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

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

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

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

(b)  If a broadband provider and an electric cooperative are unable to agree to a new pole attachment contract before the 91st day after the expiration date of an existing contract, and are unable to agree to an extension of the negotiation period for a certain number of days, the broadband provider and electric cooperative shall attempt to resolve any disagreement over the rates, terms, or conditions by submitting the contract negotiations to a mediation process. The mediation process may not extend later than the 60th day after the end of the initial 90-day negotiation period and any agreed extension of that period unless the broadband provider and 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 broadband provider and electric cooperative must share equally the expenses for the mediator.

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

SUBCHAPTER D. POLE REPLACEMENT

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

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

(2)  any rules, regulations, or orders issued by the Federal Communications Commission under 47 U.S.C. Section 224, on or before April 1, 2021, as the rule, regulation, or order existed on that date.

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

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

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

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

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

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

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

(3)  when just and reasonable, the importance of maintaining consistency in the terms and conditions governing attachment to poles owned by electric cooperatives and poles owned by investor-owned utilities.

SUBCHAPTER E.  ADDITIONAL POLE ATTACHMENT REQUIREMENTS

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

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

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

(d)  A broadband provider shall indemnify, defend, and hold harmless an 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 the gross negligence or wilful misconduct of the electric cooperative during the removal and transfer process.

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

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

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

(d)  An electric cooperative may require that a broadband provider 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.

(e)  A broadband provider shall indemnify, defend, and hold harmless an 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. 253.0403.  EASEMENTS; INDEMNITY. (a) A broadband provider is responsible for obtaining all rights-of-way and easements necessary for the installation, operation, and maintenance of the provider'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 broadband provider.

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

(d)  A broadband provider 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 broadband provider's failure to obtain a necessary right-of-way or easement for a pole attachment.

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