

**SUBJECT:** Cable operators' attachments to electric co-op utility poles

**COMMITTEE:** State Affairs — favorable, without amendment

**VOTE:** 11 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Hilderbran, Huberty, Oliveira, Smithee

0 nays

2 absent — Menéndez, Sylvester Turner

**WITNESSES:** For — Jeff Burdett, Texas Cable Association; Eric Craven, Texas Electric Cooperatives

Against — None

On — Brian Lloyd, Public Utility Commission of Texas

**DIGEST:** HB 3355 would add ch 252 to the Utilities Code to provide the framework for cable operators to make attachments to distribution poles owned or controlled by electric cooperatives.

**Contracts.** The bill would require that cable operators and electric co-ops establish a written pole attachment contract spelling out the rates, terms, and conditions for pole attachments, including the cooperative's application and permitting processes. The bill would require contracts to be just and reasonable and negotiated in good faith. A request to negotiate a new pole attachment contract between a cable operator and an electric co-op would be in writing.

**Negotiation and mediation.** The bill would provide a mechanism of negotiation and mediation if a cable operator and an electric cooperative failed to reach a contractual agreement. The existing contract would remain in force if the parties did not reach a new agreement before the expiration of the contract, or during the 180-day negotiation or 90-day mediation period provided by the bill, and any mutually agreed upon extensions.

HB 3355 would require a cable operator and an electric co-op enter

mediation if they could not agree on contract extension terms. The mediation would take place in a county in which the electric cooperative had distribution poles. The cable operator and the electric cooperative would split the costs of the mediation. If mediation failed, the cable operator or the electric cooperative could request that a court resolve the disagreement.

**Rates, terms, and conditions.** HB 3355 would require that in determining rates, terms, and conditions, the interests and benefits of the customers and potential customers of the electric co-op and the cable operator were considered, as well as safety standards and the maintenance and reliability of both electric distribution and cable services.

**Attachments to poles, transfer of attachments, abandoned**

**Attachments.** The bill would allow an electric cooperative to deny access to a pole if there was insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

An electric co-op would be required to notify a cable operator when the co-op was installing a new pole to replace an existing pole with a cable attachment. The co-op would provide a date the cable operator would remove its attachment and transfer the attachment to the new pole. The bill would allow the co-op to transfer the attachments at a cost to the cable company if the cable operator failed to transfer the attachments within 30 days of the date specified on the electric co-op's notice. A cable operator would indemnify, defend, and hold harmless the co-op from and against all liability for the removal and transfer of a pole attachment, except for personal injury or property damage arising from gross negligence or willful misconduct of the co-op during the removal and transfer process.

Cable operators would be required to remove its abandoned pole attachments from a co-op's pole within 60 days after the date the cable operator received a written request for removal of the pole attachment. The co-op would be able to grant the cable operator an extension past 60 days. The bill would allow an electric cooperative to remove and dispose of an attachment at the cable operator's expense if the attachment was not removed during the 60-day period or any extension granted by the electric cooperative.

An electric co-op could require that a cable operator post a security instrument in an amount reasonably sufficient to cover the potential cost to the co-op of removal and disposal of abandoned pole attachments. HB

3355 would require a cable operator to indemnify, defend, and hold harmless the co-op from all liability for the removal, use, sale, or disposal of abandoned pole attachments, except for personal injury or property damage arising from gross negligence or willful misconduct of the co-op.

**Rights-of-way.** A cable operator would obtain all rights-of-way and easements necessary for the installation, operation, and maintenance of the operator's pole attachments. Electric cooperatives would not be required to obtain or expand a right-of-way or easement to accommodate a pole attachment requested by a cable operator. An electric cooperative could not be held liable if the cable operator did not obtain a necessary right-of-way or easement. The bill would require the cable operator to indemnify, defend, and hold harmless the electric co-op from any liability from the cable operator's failure to obtain a necessary right-of-way or an easement for a pole attachment.

**Applicability, limitations, effective date.** The bill would not apply to pole attachment contracts entered into before September 1, 2013. Contracts between electric cooperatives and cable operators before September 1, 2013 would be governed by the law in place before that date.

HB 3355 would apply only to attachments to poles owned or controlled by electric cooperatives and would not apply to pole attachments regulated under 47 U.S.C., sec. 224 (which concerns Federal Communications Commission regulation of pole attachments by investor-owned utilities). If a court determines that HB 3355 constitutes certification under 47 U.S.C., sec. 224 then the chapter would become unenforceable.

The bill would provide that the proposed state Utilities Code, ch. 252 could not be construed to subject electric cooperatives to 47 U.S.C., sec. 224. The bill would not authorize a department, agency, or political subdivision of the state to exercise enforcement or regulatory authority over attachments to electric cooperative poles.

The bill would take effect on September 1, 2013.

SUPPORTERS  
SAY:

HB 3355 is agreed upon legislation between cable operators and electric cooperatives and has been endorsed by trade organizations representing both groups. Generally, electric cooperative and cable operators have been

able to amicably settle pole attachment disputes. But HB 3355 would provide a framework to further lessen contractual disputes and help ensure better coordination between cable operators and electric cooperatives in the field.

The bill would be good for consumers by encouraging both cable operators and electric cooperatives to use the same poles and not duplicate infrastructure.

Electric cooperatives are elected by their membership and would provide ample oversight of the legislation to ensure that costs were controlled.

**OPPONENTS  
SAY:**

Although the bill would include some consumer protections by requiring contract terms be just and reasonable, implementation of HB 3355 should be monitored to ensure that neither side, the electric cooperatives nor the cable operators, pass along unreasonable costs to ratepayers or subscribers.