

SUBJECT: Framework for broadband attachments on electric cooperative utility poles

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, P. King,
Metcalf, Raymond, Shaheen, Smithee

0 nays

3 absent — Hunter, Lucio, Slawson

WITNESSES: For — Juli Blanda, Cable One; Todd Baxter and Luke Platzer, Charter Communications; Tom Giovanetti, Institute for Policy Innovation; Johnny Kampis, Taxpayers Protection Alliance; Walt Baum, Texas Cable Association; (*Registered, but did not testify*: Richard Dennis, Coastal Bend College; Frederick Frazier and James Parnell, Dallas Police Association; Richard Lawson, Frontier Communications; Ray Hunt, Houston Police Officer Union; Juan Garcia, Latino Farmers and Ranchers Trade Association; John McCord, NFIB; Yvette Clay, North Texas Commission; Julian Martinez, SeR Jobs for Progress National; Todd Morgan, T-Mobile; Bill Sproull, Tech Titans; Marshall Kenderdine, Texas Academy of Family Physicians; Charles O'Neal, Texas Association of African American Chambers of Commerce; Grover Campbell, Texas Association of School Boards; Ray Sullivan, Texas Association of Business; Jennifer Bergland, Texas Computer Education Association; Dallas Reed, Texas Municipal Police Association; Robert Scott, Texas Rural Broadband Coalition; Neal T. Buddy Jones, Texas Technology Consortium; Dana Harris, The Greater Austin Chamber of Commerce)

Against — William Hetherington, Bandera Electric Cooperative; Darren Schauer, Guadalupe Valley Electric Cooperative; Kathi Calvert, Houston County Electric Cooperative; Eric Craven, Texas Electric Cooperatives; Robert Walker, Upshur Rural Electric Cooperative; (*Registered, but did not testify*: John T. Wright, Big Sandy Sand Company; Greg Jones, Cherokee County Electric Cooperative; Nelson Nease, East Texas Electric Cooperative, Inc.; Mark Tamplin, Japer-Newton Electric Cooperative,

Inc.; Doug Turk, Sam Houston Electric Cooperative; Robert Howard, South Texans' Property Rights Association; Cliff Campbell and Trey Teaff, Wood County Electric Cooperative; Russell Parish)

On — JP Urban, AECT; Kaleb McLaurin, Texas and Southwestern Cattle Raisers Association; (*Registered, but did not testify*: Thomas Parkinson)

BACKGROUND: Some have suggested that certain practices by electric cooperatives regarding access to electric poles can act as a barrier to broadband deployment, including in underserved areas and that a modernized pole attachment regime for electric cooperatives should be established to promote consistency, fairness, and transparency in the deployment of broadband service to rural Texas.

DIGEST: CSHB 1505 would establish a framework for the affixture of a pole attachment by a broadband provider to a pole owned and controlled by an electric cooperative, including an application process and contracts, procedures related to make-ready activities and attachment specifications, and cost sharing of pole modifications and replacements.

The bill would define "pole attachment" as 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.

Pole access. A broadband provider could not access a pole owned by an electric cooperative for the purpose of placing a pole attachment unless the provider applied for that access.

A broadband provider that attached a pole attachment could use the attachment for any service delivered over the provider's facilities, including cable service.

An electric cooperative could not deny access to a pole if a capacity, safety, reliability, or engineering consideration that would supply a basis for denial of access under federal law or any rule, regulation, or order

issued by the Federal Communications Commission (FCC) could be remedied by rearranging, expanding, replacing, or otherwise safely reengineering the pole or pole attachments through make-ready activities.

An electric cooperative granting access would have to rearrange, expand, replace, or otherwise safely reengineer any pole if it was reasonably necessary to do so to accommodate a pole attachment and consistent with applicable safety and engineering standards as authorized under the bill.

Pole attachment contracts. An electric cooperative that owned a pole could require a broadband provider that attached a pole attachment to enter into a contract for access to the pole.

The terms and conditions of a contract would have to be consistent with federal law governing pole attachments as it existed on April 1, 2021, and any rule, regulation, or order issued by the FCC that existed on that date, unless if the terms and conditions addressed recurring pole rental rates.

Rates, terms, and conditions. A broadband provider and an electric cooperative would have to establish the rates, terms, and conditions for pole attachments by a written contract executed by both parties. The rates would have to be just, reasonable, and nondiscriminatory. In determining whether rates were just and reasonable, certain factors listed in the bill would have to be considered.

A broadband provider and an electric cooperative would have to negotiate a pole attachment contract and any amendment, modification, or renewal thereof in good faith. A request to negotiate a new pole attachment contract or to amend, modify, or renew a contract by a broadband provider or an electric cooperative would have to be made in writing.

Contract negotiations, mediation. If a broadband provider and an electric cooperative were 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 would remain in force

for certain time periods after expiration and during negotiation or mediation.

The bill would provide for a mediation process if a broadband provider and an electric cooperative were unable to agree to a new pole attachment contract before the 91st day after the expiration date of an existing contract and were unable to agree to an extension of the negotiation period for a certain number of days.

If the mediation process did not resolve the disagreement over rates, terms, or conditions of a new pole attachment agreement, or if a dispute arose under the terms of an existing agreement, the broadband provider or the electric cooperative could file suit in a district court to resolve the disagreement or dispute, including to enforce the terms of the agreement.

Pole replacement costs. An electric cooperative that replaced a pole would have to assess charges from a broadband provider consistent with federal law governing pole attachments as it existed on April 1, 2021, and any rules, regulations, or orders issued by the FCC under such law on or before that date.

The Public Utility Commission (PUC) would have to adopt and enforce rules regarding the compensation that an electric cooperative could require from a broadband provider to replace a pole if federal law was amended or a rule, regulation, or order issued by the FCC was repealed, amended, or replaced in a manner that pertained to the charges that could be assessed by a pole owner for a pole replacement. A PUC rule would have to be just, reasonable, and nondiscriminatory, and in adopting the rules, the PUC would have to consider certain items as listed in the bill.

Transfer of attachments. Before an electric cooperative installed a new pole to replace an existing pole due to the rerouting, maintenance, or upgrading of the electric distribution system, the cooperative would have to provide notice of the replacement to each broadband provider with a pole attachment on the existing pole.

The notice would have to specify a date by which the broadband provider had to remove the pole attachment from the existing pole and transfer the attachment to the new pole.

If a broadband provider did not transfer a pole attachment within 31 days after the date specified in the notice, the electric cooperative could transfer the pole attachment at the broadband provider's expense, including the cost for the electric cooperative to return to the site.

A broadband provider would have to 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, except for personal injury or property damage arising from the gross negligence or willful misconduct of the cooperative during the removal and transfer process.

Abandoned pole attachments. A broadband provider that received a written request from an electric cooperative to remove an abandoned pole attachment owned by the provider from a pole owned by the cooperative would have to remove the attachment within 60 days of receiving the request. Before the deadline, a broadband provider could request, and an electric cooperative could grant, a reasonable extension of that deadline.

If a broadband provider did not remove a pole attachment by the deadline, the electric cooperative could remove, use, sell, or dispose of the pole attachment at the broadband provider's expense.

An electric cooperative could 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.

A broadband provider would have to 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 willful misconduct of the cooperative during the removal and disposal process.

Easements. A broadband provider would be responsible for obtaining all rights-of-way and easements necessary for the installation, operation, and maintenance of the provider's pole attachments. An electric cooperative would not be required to obtain or expand a right-of-way or easement to accommodate a pole attachment requested by a broadband provider.

An electric cooperative would not be liable if a broadband provider was prevented from placing or maintaining a pole attachment because the broadband provider did not obtain a necessary right-of-way or easement.

A broadband provider would have to 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.

Other provisions. The bill would apply to a pole attachment affixed by a broadband provider to a pole owned and controlled by an electric cooperative but would not apply to a pole attachment regulated by the FCC.

The bill would 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. The bill would 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 bill.

The bill would not constitute state certification under federal law regulating pole attachments. If a court determined that the bill constituted certification, the bill would not be enforceable and would have no effect.

The bill could not be construed to subject an electric cooperative to

regulation by the FCC. 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.

Nonrecurring charges authorized by the bill would have to be cost-based.

The bill would take effect September 1, 2021.