

UTILITIES CODE

TITLE 5. PROVISIONS AFFECTING THE OPERATION OF UTILITY FACILITIES

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 3 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.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. [1505](#)), Sec. 3, eff. September 1, 2021.

Sec. 253.0002. APPLICABILITY. This chapter applies to a pole attachment that is used wholly or partly to provide broadband service and 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.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. 1505), Sec. 3, eff. September 1, 2021.

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.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. 1505), Sec. 3, eff. September 1, 2021.

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.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. 1505), Sec. 3, eff. September 1, 2021.

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.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. 1505), Sec. 3, eff. September 1, 2021.

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

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. 1505), Sec. 3, eff. September 1, 2021.

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.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. 1505), Sec. 3, eff. September 1, 2021.

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.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. 1505), Sec. 3, eff. September 1, 2021.

Sec. 253.0103. NONDISCRIMINATORY ACCESS; MODIFICATION OR REPLACEMENT TO ACCOMMODATE ATTACHMENT. (a) Except as provided by this chapter, an electric cooperative shall provide a broadband provider with nondiscriminatory access to a pole that the cooperative owns or controls.

(b) Except as provided by Subsection (c), an electric cooperative may deny a broadband provider access to a pole:

- (1) if there is insufficient capacity; or
- (2) for reasons of safety, reliability, and generally applicable engineering purposes.

(c) An electric cooperative may not deny a broadband provider access to a pole if the basis for denial may be remedied by rearranging facilities on the pole through reasonable make-ready activities.

(d) Except as provided by Subsection (e), if a pole must be

replaced to accommodate a new pole attachment applied for by a broadband provider:

(1) the electric cooperative and broadband provider shall determine, through good faith negotiations, a reasonable date by which the pole replacement will occur; and

(2) the broadband provider shall pay the actual costs of replacing the pole, including the cost to:

(A) remove and dispose of the existing pole;

(B) purchase and install a replacement pole; and

(C) transfer any existing facilities to the new pole.

(e) An electric cooperative is responsible for the costs of removing and replacing under Subsection (d) a pole:

(1) with recorded conditions or defects that would reasonably be expected to endanger human life or property and which should be promptly corrected; or

(2) that must be replaced for safety or reliability as a result of normal wear and tear or other natural causes and not on account of a pole attachment or the action of a broadband provider or third party.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. 1505), Sec. 3, eff. September 1, 2021.

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) The terms and conditions of a contract under Subsection (a) must be consistent with this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. 1505), Sec. 3, eff. September 1, 2021.

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 rates, terms, and conditions of a contract under this chapter must:

- (1) be just, reasonable, and nondiscriminatory; and
- (2) comply with this chapter.

(c) In determining whether rates, terms, and conditions 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 electric services and broadband services offered through the pole attachments;

(4) compliance with applicable safety standards; 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.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. [1505](#)), Sec. 3, eff. September 1, 2021.

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, the broadband provider or electric cooperative may file suit in a district court to resolve the disagreement or dispute.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. 1505), Sec. 3, eff. September 1, 2021.

SUBCHAPTER D. 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.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. [1505](#)), Sec. 3, eff. September 1, 2021.

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.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. 1505), Sec. 3, eff. September 1, 2021.

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.

Added by Acts 2021, 87th Leg., R.S., Ch. 659 (H.B. 1505), Sec. 3, eff. September 1, 2021.