

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 455

Introduced by Friesen, 34.

Read first time January 15, 2021

Committee:

- 1 A BILL FOR AN ACT relating to telecommunications; to amend section
- 2 75-129, Reissue Revised Statutes of Nebraska, and sections
- 3 75-109.01, 75-118, and 86-5,107, Revised Statutes Cumulative
- 4 Supplement, 2020; to adopt the Broadband Pole Attachment Act; to
- 5 change the jurisdiction of the Public Service Commission and provide
- 6 duties; to change provisions relating to requirements and
- 7 applicability of the Broadband Internet Service Infrastructure Act;
- 8 to harmonize provisions; and to repeal the original sections.
- 9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Broadband Pole Attachment Act.

3 Sec. 2. For purposes of the Broadband Pole Attachment Act:

4 (1) Attachment means any attachment by a communications service
5 provider to a utility pole owned or controlled by an electric utility;

6 (2) Communications service provider has the same meaning as in
7 section 86-1214.

8 (3) Electric utility means any public power district, public power
9 and irrigation district, municipality, registered group of
10 municipalities, electric cooperative, electric membership association,
11 joint entity formed under the Interlocal Cooperation Act, joint public
12 agency formed under the Joint Public Agency Act, agency formed under the
13 Municipal Cooperative Financing Act, and any other governmental entity
14 providing electric service;

15 (4) Pole attachment agreement or agreement means an agreement
16 between a communications service provider and an electric utility setting
17 forth the rates, terms, and conditions for attachments to the electric
18 utility's utility poles and in the electric utility's rights-of-way; and

19 (5) Utility pole means a pole, duct, conduit, structure, or right-
20 of-way that is used in whole or in part for distributing electricity by
21 an electric utility or an affiliate thereof.

22 Sec. 3. In order to promote the deployment of broadband services in
23 the state, each electric utility shall:

24 (1) Charge rates and fees for attachments to utility poles by
25 communications service providers that are just, reasonable, and
26 nondiscriminatory regardless of the services furnished;

27 (2) Make the electric utility's easements available to a
28 communications service provider and, where necessary, obtain expansions
29 of such easements to accommodate the communications service provider's
30 attachments on a nondiscriminatory and competitively neutral basis;

31 (3) Establish terms and conditions for attachments to utility poles

1 by any communications service provider that are nondiscriminatory,
2 competitively neutral, commercially reasonable, and consistent with the
3 provisions of 47 U.S.C. 224 and any Federal Communications Commission
4 rules, regulations, and orders adopted and promulgated or issued
5 thereunder, as such section, rules, regulations, and orders existed on
6 January 1, 2021;

7 (4) If consistent with the National Electrical Safety Code,
8 rearrange, expand, replace, or otherwise reengineer any utility pole upon
9 the request of a communications service provider if necessary to
10 accommodate the communications service provider's new attachment. If the
11 replacement of a utility pole is necessary pursuant to this subdivision,
12 an electric utility shall not require reimbursement of costs associated
13 with such pole replacement from a communications service provider beyond
14 recovery of the electric utility's actual and reasonable costs of
15 advancing the retirement of the existing utility pole. Such costs shall
16 be measured by the net book value of the existing utility pole plus the
17 incremental cost, if any, of installing a utility pole with greater
18 capacity than the utility pole such electric utility would have installed
19 in the normal course of its operations, and any other incremental costs
20 proved by the electric utility, except that such incremental costs shall
21 in no event include any costs associated with the installation of a
22 utility pole the electric utility would have installed at the same
23 location;

24 (5) Complete utility pole replacement or other make-ready work
25 within ninety days of receipt of a complete attachment request from a
26 communications service provider;

27 (6) Allow a communications service provider or its designee to use
28 boxing techniques, extension arms, attachments below existing attachments
29 where space is unavailable above existing attachments, temporary
30 attachments, or other methods or equipment, except that such use shall
31 comply with the National Electrical Safety Code or other applicable

1 safety codes;

2 (7) Not require a communications service provider to comply with
3 utility pole attachment specifications or requirements that exceed
4 National Electrical Safety Code specifications, applicable fire safety
5 codes, or any building code or similar code of general applicability for
6 the protection of public health, safety, or welfare that were adopted by
7 the applicable local governmental jurisdiction prior to the filing of a
8 utility pole attachment application, except that any such specifications
9 or requirements adopted by a local governmental jurisdiction that owns or
10 controls an electric utility shall be just, reasonable, and
11 nondiscriminatory. Nothing in this subdivision shall be construed to
12 expand the power of any local governmental jurisdiction; and

13 (8) Negotiate in good faith with communications service providers to
14 enter into pole attachment agreements consistent with the Broadband Pole
15 Attachment Act and to conform existing pole attachment agreements to be
16 consistent with the Broadband Pole Attachment Act.

17 Sec. 4. An electric utility or a communications service provider
18 may file a complaint with the Public Service Commission regarding any
19 dispute concerning a pole attachment agreement. The commission shall have
20 jurisdiction to adjudicate such complaint and grant any appropriate
21 relief. In resolving complaints filed under this section, and to the
22 extent not otherwise provided in the Broadband Pole Attachment Act or by
23 agreement of the parties, the commission shall give effect to the
24 policies expressed in 47 U.S.C. 224 and any Federal Communications
25 Commission rules, regulations, and orders adopted and promulgated or
26 issued thereunder, as such section, rules, regulations, and orders
27 existed on January 1, 2021. Either the complainant or respondent may
28 request a hearing on the complaint within thirty days after filing or
29 receiving notice of the complaint. The commission shall decide any
30 complaint filed under this section and issue a final appealable order
31 pursuant to section 75-128 but not later than one hundred twenty days

1 after the filing of the complaint.

2 Sec. 5. Notwithstanding any existing pole attachment agreement, a
3 communications service provider may submit a written request to an
4 electric utility to negotiate a new pole attachment agreement or to
5 amend, modify, or renew any existing pole attachment agreement to be
6 consistent with the Broadband Pole Attachment Act. The parties shall
7 negotiate in good faith for not less than sixty days after the
8 communications service provider submits the written request, after which
9 time if no agreement is reached either party may petition the Public
10 Service Commission to determine the terms of a pole attachment agreement
11 consistent with the Broadband Pole Attachment Act. Either party may
12 request a determination hearing within thirty days after the filing of
13 the petition. The commission shall make a determination and issue a final
14 appealable order pursuant to section 75-128 but not later than one
15 hundred eighty days after the filing of the petition for such
16 determination. The terms of any agreement as determined by the commission
17 pursuant to this section shall apply retroactively to all attachments
18 installed between the date of the written request to negotiate and the
19 date of the commission's determination, and shall also apply to the
20 continuing terms of all existing attachments that were installed prior to
21 the written request. Between the date of the written request to negotiate
22 and the date of the commission's determination, the terms and conditions
23 of any existing pole attachment agreement addressing such attachments
24 apply subject to true-up to put the parties in the positions in which
25 they would have been had the commission's determination been in effect on
26 the date of the written request to negotiate. In the absence of any such
27 existing agreement, unless the parties agree otherwise, the commission
28 shall, within thirty days of the filing of the petition for a
29 determination, establish interim rates, terms, and conditions subject to
30 true-up to put the parties in the positions in which they would have been
31 had the commission's determination been in effect on the date of the

1 written request to negotiate.

2 Sec. 6. The Public Service Commission may adopt and promulgate
3 rules and regulations to carry out the purposes of the Broadband Pole
4 Attachment Act.

5 Sec. 7. Section 75-109.01, Revised Statutes Cumulative Supplement,
6 2020, is amended to read:

7 75-109.01 Except as otherwise specifically provided by law, the
8 Public Service Commission shall have jurisdiction, as prescribed, over
9 the following subjects:

10 (1) Common carriers, generally, pursuant to sections 75-101 to
11 75-158;

12 (2) Electric utility and communications service provider complaints
13 and petitions filed pursuant to the Broadband Pole Attachment Act;

14 (3) ~~(2)~~ Grain pursuant to the Grain Dealer Act and the Grain
15 Warehouse Act and sections 89-1,104 to 89-1,108;

16 (4) Jurisdictional utilities governed by the State Natural Gas
17 Regulation Act. If the provisions of Chapter 75 are inconsistent with the
18 provisions of the State Natural Gas Regulation Act, the provisions of the
19 State Natural Gas Regulation Act control;

20 (5) ~~(3)~~ Manufactured homes and recreational vehicles pursuant to the
21 Uniform Standard Code for Manufactured Homes and Recreational Vehicles;

22 (6) ~~(4)~~ Modular housing units pursuant to the Nebraska Uniform
23 Standards for Modular Housing Units Act;

24 (7) ~~(5)~~ Motor carrier registration, licensure, and safety pursuant
25 to sections 75-301 to 75-343, 75-369.03, 75-370, and 75-371;

26 (8) ~~(6)~~ Pipeline carriers and rights-of-way pursuant to the Major
27 Oil Pipeline Siting Act, the State Natural Gas Regulation Act, and
28 sections 75-501 to 75-503. If the provisions of Chapter 75 are
29 inconsistent with the provisions of the Major Oil Pipeline Siting Act,
30 the provisions of the Major Oil Pipeline Siting Act control;

31 (9) ~~(7)~~ Railroad carrier safety pursuant to sections 74-918, 74-919,

1 74-1323, and 75-401 to 75-430;

2 ~~(10)~~ ~~(8)~~ Telecommunications carriers pursuant to the Automatic
3 Dialing-Announcing Devices Act, the Emergency Telephone Communications
4 Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-
5 Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act,
6 the Nebraska Telecommunications Universal Service Fund Act, the
7 Telecommunications Relay System Act, the Telephone Consumer Slamming
8 Prevention Act, and sections 86-574 to 86-579;

9 ~~(11)~~ ~~(9)~~ Transmission lines and rights-of-way pursuant to sections
10 70-301 and 75-702 to 75-724; and

11 ~~(12)~~ ~~(10)~~ Water service pursuant to the Water Service Regulation
12 Act. ~~;~~ and

13 ~~(11) Jurisdictional utilities governed by the State Natural Gas~~
14 ~~Regulation Act. If the provisions of Chapter 75 are inconsistent with the~~
15 ~~provisions of the State Natural Gas Regulation Act, the provisions of the~~
16 ~~State Natural Gas Regulation Act control.~~

17 Sec. 8. Section 75-118, Revised Statutes Cumulative Supplement,
18 2020, is amended to read:

19 75-118 The commission shall:

20 (1) Until July 1, 2021, fix all necessary rates, charges, and
21 regulations governing and regulating the transportation, storage, or
22 handling of household goods by any common carrier in Nebraska intrastate
23 commerce;

24 (2) Fix all necessary rates, charges, and regulations governing and
25 regulating the transportation of passengers by any common carrier in
26 Nebraska intrastate commerce;

27 (3) Until July 1, 2021, make all necessary classifications of
28 household goods that may be transported, stored, or handled by any common
29 carrier in Nebraska intrastate commerce, such classifications applying to
30 and being the same for all common carriers;

31 (4) Authorize the transportation of (a) household goods under a

1 license issued pursuant to section 75-304.03 or (b) employees of a
2 railroad carrier under a license issued pursuant to section 75-304.04;

3 (5) Prevent and correct the unjust discriminations set forth in
4 section 75-126;

5 (6) Enforce all statutes and commission regulations pertaining to
6 rates and, if necessary, institute actions in the appropriate court of
7 any county in which the common carrier involved operates except actions
8 instituted pursuant to sections 75-140 and 75-156 to 75-158. All suits
9 shall be brought and penalties recovered in the name of the state by or
10 under the direction of the Attorney General;~~and~~

11 (7) Enforce the Major Oil Pipeline Siting Act and the State Natural
12 Gas Regulation Act; and -

13 (8) Resolve complaints and determine agreement terms under the
14 Broadband Pole Attachment Act.

15 Sec. 9. Section 75-129, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 75-129 The commission may hold sessions at any place in the state
18 when deemed necessary to facilitate the discharge of its duties and may
19 conduct the hearing and other proceedings provided for in sections 75-101
20 to 75-801, in the Major Oil Pipeline Siting Act, in the State Natural Gas
21 Regulation Act, in the Broadband Pole Attachment Act, or under any other
22 law of this state at such place or places in the state as may, in the
23 judgment of the commission, be the most convenient and practicable for
24 determining the particular matter before the commission. The commission
25 may hold public meetings as provided in section 57-1407.

26 Sec. 10. Section 86-5,107, Revised Statutes Cumulative Supplement,
27 2020, is amended to read:

28 86-5,107 (1) In entering into a broadband facility agreement, an
29 electric utility shall:

30 (a)(i) ~~(a)~~ Not discriminate among commercial broadband suppliers in
31 offering or granting rights to install or attach any attached facilities;

1 or

2 (ii) ~~(b)~~ Charge fees that are nondiscriminatory among commercial
3 broadband suppliers for a substantially similar lease or use of the
4 capacity of attached facilities owned or controlled by the electric
5 utility, but only to the extent an electric utility chooses, in its sole
6 discretion, to offer the lease or use to a particular commercial
7 broadband supplier; and -

8 (b) For broadband facility agreements that meet the definition of
9 pole attachment agreements as defined in section 2 of this act, comply
10 with the terms of the Broadband Pole Attachment Act.

11 (2) Nothing in this section requires an electric utility to offer or
12 grant a right to access or use an electric utility easement or to use
13 attached facilities or electric utility infrastructure owned or
14 controlled by the electric utility in a manner that would, in the
15 electric utility's sole discretion, materially interfere with the
16 electric utility's construction, maintenance, or use of any electric
17 utility infrastructure for the provision of electric service, except that
18 nothing in this section abrogates or alters any requirements under the
19 Broadband Pole Attachment Act.

20 (3) Nothing in the Broadband Internet Service Infrastructure Act:

21 (a) Is intended to subject an electric utility to regulation by the
22 Federal Communications Commission;

23 (b) Constitutes an exercise of, or an obligation or intention to
24 exercise, the right of the state under 47 U.S.C. 224(c), as such section
25 existed on January 1, 2020, to regulate the rates, terms, and conditions
26 for pole attachments as defined in 47 U.S.C. 224(a)(4), as such section
27 existed on January 1, 2020;

28 (c) Constitutes a certification, or an obligation or intention to
29 certify, to the Federal Communications Commission under 47 U.S.C. 224, as
30 such section existed on January 1, 2020;

31 (d) Prevents the parties involved from filing a claim or cause of

1 action in any court of competent jurisdiction for any dispute arising
2 under the Broadband Internet Service Infrastructure Act, except that any
3 dispute described in section 4 or 5 of this act shall be resolved as set
4 forth in the Broadband Pole Attachment Act;~~or~~

5 (e) In any way affects the authority of electric utilities to enter
6 into agreements with any party, outside the requirements of the Broadband
7 Internet Service Infrastructure Act, relating to the use of its easements
8 or electric system facilities; or -

9 (f) In any way affects agreements subject to the requirements of the
10 Broadband Pole Attachment Act.

11 Sec. 11. Original section 75-129, Reissue Revised Statutes of
12 Nebraska, and sections 75-109.01, 75-118, and 86-5,107, Revised Statutes
13 Cumulative Supplement, 2020, are repealed.