

# An Act

ENROLLED HOUSE  
BILL NO. 3835

By: Martinez, Newton,  
Fetgatter, and Caldwell  
(Trey) of the House

and

Howard of the Senate

An Act relating to the Oklahoma Corporation Commission; creating the Facilitating Internet Broadband Rural Expansion (FIBRE) Act; defining term; requiring the use of certain pole attachment rate formula; providing certain formula; making certain exemption; requiring certain agreement prior to attaching; exempting certain unauthorized pole attachments; setting certain new attachment rate; stating certain contingencies; requiring rates not include certain charges; requiring certain separate payment; requiring certain contracts; exempting certain unauthorized or noncompliant pole attachments; requiring the submission of data; providing for certain penalty; vesting authority in the Oklahoma district courts to enforce certain provisions and settle disputes; declaring certain business information to be proprietary; requiring certain filed information be treated in a confidential manner and subject to confidentiality order; requiring certain information to be filed under seal; allowing court to seek certain information; providing for noncodification; providing for codification; and providing an effective date.

SUBJECT: Oklahoma Corporation Commission

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Facilitating Internet Broadband Rural Expansion (FIBRE) Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 158.66 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. As used in subsection B of this section, the term "attaching entity" shall include the electric attachments of rural electric cooperatives and their subsidiaries.

B. Except as otherwise provided in this section, when a rural electric cooperative and a communications services provider cannot agree to a voluntary negotiated pole attachment rate, the maximum pole attachment rate shall be governed by the following formula:

Maximum Per Pole Rate = Space Factor x Net Cost of Bare Pole x Carrying Charge Rate

Space Factor = (Occupied Space + ((2/3 x Unusable Space)/No. of Attaching Entities)) ÷ Pole Height

Net Pole Investment = Gross Pole Investment (Account 364) - Accumulated Depreciation (Poles) - Accumulated Deferred Taxes

Carrying Charges = A rural electric cooperative's Administrative + Maintenance charges + Depreciation + Taxes + Return

Administrative = Total Admin and General Expense ÷ Net Plant

Maintenance = Account 593 Expense ÷ Net Pole Investment

Depreciation = Gross Pole Investment ÷ Net Pole Investment x Depreciation Rate

Taxes = Account 408.1 (Gross Receipts Tax) ÷ Net Plant

Return = 8%

Unusable Space = 25.0 ft

Occupied Space = 1 ft

## Presumptive Default Values

No. of Attachers = Actual number of attaching entities to poles that have third-party attachments

Pole Height = 37.5 ft or higher based on the actual average pole height

Net Cost of Bare Pole = 85% of Net Pole Investment ÷ Total Number of Poles

This subsection shall not apply to any pole attachments authorized under currently existing and valid pole attachment license agreements entered into prior to the effective date of this act. The determination of a maximum attachment rate does not remove the requirement of a communications services provider to have a pole attachment agreement with the owner of the poles prior to attaching, and this subsection shall not apply to any unauthorized pole attachments.

C. Notwithstanding the maximum pole attachment rate determined in subsection B of this section, beginning on the effective date of this act and for four (4) years thereafter, the rates charged by a rural electric cooperative for new attachments to cooperative-owned electric poles by providers of telecommunications, broadband, video, Internet services, or any cooperative affiliate entity or subsidiary company, under existing pole attachment license agreements or such agreements entered into on or after the effective date of this act, shall not exceed One Dollar (\$1.00) per cooperative-owned electric pole per year ("One Dollar Deal"), contingent upon the following:

1. A retail broadband provider shall not have an existing attachment on the specific electric pole;

2. New attachments subject to the One Dollar Deal shall be used to serve customers located within the applicable cooperative's certified territory established under the Retail Electric Supplier Certified Territory Act and are in an unserved area as defined by the Oklahoma Broadband Service Map;

3. One Dollar Deal attachments shall be capable of providing wire-line broadband service at speeds of one hundred (100) megabits per second download and twenty (20) megabits per second upload. The broadband service speeds listed in this paragraph shall be subject

to change or update when, or if, the Federal Communications Commission makes new rulings related to its definition of broadband and when that new definition exceeds a speed of one hundred (100) megabits per second download and twenty (20) megabits per second upload; and

4. Within sixty (60) days of the end of each calendar year, applicable attaching providers shall submit written reports and information to the appropriate rural electric cooperative evidencing compliance with all One Dollar Deal attachment requirements. The evidence of compliance shall include the customers served, customers passed, service level offered, and specific qualifying poles attached to that qualify for the One Dollar Deal. The intentional submission of any incomplete or any false information pursuant to this section shall result in an administrative penalty of One Hundred Dollars (\$100.00) a day for the first thirty (30) days, Five Hundred Dollars (\$500.00) a day for the next thirty (30) days, and One Thousand Dollars (\$1,000.00) every day thereafter until accurate data is presented.

D. The rates provided in this section shall not include any applicable charges for electric service. A communications services provider must pay separately for electric service and such service shall be charged to providers at the applicable retail market rate.

E. The monetary cap provided under subsection B of this section and the One Dollar Deal provided under subsection C of this section shall not eliminate the requirement of communications services providers to contract with the rural electric cooperatives on terms and conditions of attachments under pole attachment license agreements.

F. This section shall not apply to any communications services provider that maintains unauthorized pole attachments on cooperative poles or fails to remedy any noncompliant pole attachments per the cooperative's direction.

G. Rural electric cooperatives shall be required to submit presumptive default values to retail broadband providers regarding pole attachments and shall provide the requested data within sixty (60) days upon the execution of a signed letter of intent and nondisclosure agreement. The intentional submission of any incomplete or any false data pursuant to this section shall result in an administrative penalty of One Hundred Dollars (\$100.00) a day for the first thirty (30) days, Five Hundred Dollars (\$500.00) a day

for the next thirty (30) days, and One Thousand Dollars (\$1,000.00) every day thereafter until accurate data is presented.

H. The Oklahoma district court system shall be vested with authority to enforce the provisions of this section and to settle disputes which may arise regarding pole attachments relative to electric cooperative facilities. The electric cooperative's business information used to calculate the formula found in subsection B of this section is sensitive and proprietary in nature and is hereby declared proprietary business information which is to be treated in a confidential manner by all parties to any legal action brought under this section, and such information shall be made subject to a confidentiality order as shall be prescribed by a court. To the extent such information is filed with a court, it shall be filed under seal, made available only to parties to the action under confidentiality orders, and shall not be made public. The court may seek information including, but not limited to:

1. Records that correlate to the following Federal Energy Regulatory Commission and United States Department of Agriculture Rural Utility Service Account Codes:

- a. 108 - Accumulated Provision for Depreciation of Electric Utility Plant,
- b. 190 - Accumulated Deferred Income Taxes,
- c. 281 - Accumulated Deferred Income Taxes - Accelerated Amortization Property,
- d. 282 - Accumulated Deferred Income Taxes - Other Property,
- e. 283 - Accumulated Deferred Income Taxes - Other,
- f. 364 - Poles, Towers, and Fixtures,
- g. 365 - Overhead Conductors and Devices,
- h. 369 - Services,
- i. 408.1 - Taxes - Property,
- j. 409.1 - Income Taxes, Utility Operating Income,

- k. 410.1 - Provision for Deferred Income Taxes, Utility Operating Income,
- l. 411.1 - Provision for Deferred Income Taxes - Credit, Utility Operating Income,
- m. 411.4 - Investment Tax Credit Adjustments, Utility Operations, and
- n. 593 - Maintenance of Overhead Lines;

2. Number of poles owned, leased, or operated by the electric cooperative;

3. Number of attachments on poles owned, leased, or operated by the electric cooperative;

4. Average height of poles owned, leased, or operated by the electric cooperative;

5. Cooperative-defined percentage of usable space on poles owned, leased, or operated by the electric cooperative; and

6. Cooperative's established rate of return.

SECTION 3. This act shall become effective November 1, 2022.

Passed the House of Representatives the 24th day of March, 2022.

\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

Passed the Senate the 25th day of April, 2022.

\_\_\_\_\_  
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_