

SENATE BILL 1049

By Kelsey

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 65, Chapter 21, relative to pole attachment arrangements between utilities and attaching parties.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 65-21-105, is amended by deleting the section in its entirety and by substituting instead the following:

65-21-105

(a) As used in this section:

(1) "Attaching party" means a telecommunication service provider, as defined by chapter 4, part 1 of this title, and cable operators, as defined in 47 U.S.C. § 522; and

(2) "Utilities" means a municipally owned utility operated pursuant to § 7-52-103, or any other public or private act, and any rural cooperatively owned utility doing business pursuant to the authority of chapter 25 of this title, or title 48, chapter 53.

(b) For the purposes of enhancing competitive communications services markets and encouraging deployment of broadband communications services to the citizens of this state, all utilities shall allow an attaching party to make pole attachments, as defined by 47 U.S.C. § 224 (a)(4), at just, reasonable and non-discriminatory rates, terms and conditions pursuant to negotiated or adjudicated agreements. Such pole attachments may be denied only where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, if those limitations cannot be

remedied by rearranging, expanding, replacing or otherwise reengineering facilities at the reasonable and actual cost of the attaching party requesting the pole attachment.

(c)

(1) Upon receiving a request for a pole attachment agreement, a utility and the attaching party shall negotiate in good faith in an attempt to arrive at a mutually agreeable contract for attachments to the utility's poles.

(2) Within ten (10) days after receiving a request to negotiate a pole attachment agreement, the utility shall provide the attaching party with the most recent copy of the utility's annual report to the Tennessee Valley authority and its most recent pole count certified by the governing board of the utility as accurate.

(3) In the event the parties are unable to reach an agreement within thirty (30) days of a request to negotiate pursuant to subdivision (c)(2), either party may bring an action before the administrative law judge of the secretary of state. Such an action shall include a petition with supporting information, served on the other party, describing:

(A) The unresolved issues;

(B) The position of the petitioning party with respect to such issues;

(C) If the petitioning party is the utility and pole attachment rates are an unresolved issue, the information required by subdivision (c)(2); and

(D) Any other issue discussed and resolved by the parties during the negotiation.

(4) The non-petitioning party to a negotiation pursuant to this section may respond to the other party's petition and provide such additional information as it desires within fourteen (14) days after the commencement of the proceeding.

(5) The administrative law judge shall limit the judge's consideration of any petition to the issues set forth in the petition and in the response, if a

response is filed. The administrative law judge may require the parties to provide any additional information necessary to reach a decision on the unresolved issues. The administrative law judge shall resolve all issues properly presented within one hundred twenty (120) days from the commencement of the action, unless otherwise mutually agreed by the parties, and such resolution shall be in writing and include an explanation of the basis for each determination. The administrative law judge shall have exclusive jurisdiction to resolve disputes arising from the negotiation of pole attachment agreements under this section.

(6) The administrative law judge shall establish a procedural schedule to resolve the disputes identified in the pleadings within the time period provided for in subdivision (c)(4) consistent with the public interest so as to derive just, reasonable, and non-discriminatory rates, terms and conditions. In determining pole attachment rates, the administrative law judge shall consider and apply such other factors or evidence that may be presented by a party, including without limitation, the rules and regulations in effect on the effective date of this act applicable under section 224 of the Communications Act of 1934, as amended, and any effect of such rates on the deployment or utilization, or both, of broadband and other telecommunications services.

(7) The administrative law judge may charge the parties, on an equal basis, a reasonable amount for the costs of conducting the adjudication.

(8) In the event an attaching party delivers written notice of its intent to renew its pole attachment agreement to a utility, including any agreement that may have expired prior to the effective date of this act, the parties' respective rights and obligations under the existing agreement, or the last agreement in

effect, shall remain in full force and effect until the parties enter into a renewal or successor agreement by negotiation or adjudication as prescribed in this section.

(9) The administrative law judge shall make available for public inspection and copying any agreement approved pursuant to a petition filed pursuant to this subsection (c) within ten (10) days following the execution of such agreement.

(d)

(1) Within thirty (30) days of the determination of the administrative law judge, either party may petition for an appeal to the chancery court of Davidson County. The court shall consider the appeal on the record before the administrative law judge. The petition shall set forth the issues to be considered in the appeal. The court shall presume the determinations of the administrative law judge correct if they are supported by substantial evidence.

(2) Either party aggrieved by the ruling of the court shall have an appeal as of right to the Tennessee court of appeals as governed by the Tennessee rules of appellate procedure.

(e)

(1) Nothing in this section shall be construed to rescind, impair or affect any unexpired pole attachment agreements in effect on the effective date of this act, and this act shall only apply to pole attachment agreements entered into, or renewed on or after the effective date of this act.

(2) This section shall not apply to any pole attachments regulated pursuant to 47 U.S.C. § 224.

(3) At any time, upon the complaint of any interested party, the administrative law judge shall have the authority and jurisdiction, after notice and a hearing, to enforce this section by appropriate order.

SECTION 2. This act shall not be construed in any way to effect the application of § 7-59-316.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of the act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2013, the public welfare requiring it.