

1 **SENATE FLOOR VERSION**

2 April 14, 2022

3 ENGROSSED HOUSE
4 BILL NO. 3835

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

5 and

6 Howard of the Senate
7

8
9 An Act relating to the Oklahoma Corporation
Commission; creating the Facilitating Internet
10 Broadband Rural Expansion (FIBRE) Act; defining term;
requiring the use of certain pole attachment rate
11 formula; providing certain formula; making certain
exemption; requiring certain agreement prior to
12 attaching; exempting certain unauthorized pole
attachments; setting certain new attachment rate;
13 stating certain contingencies; requiring rates not
include certain charges; requiring certain separate
14 payment; requiring certain contracts; exempting
certain unauthorized or noncompliant pole
15 attachments; requiring the submission of data;
providing for certain penalty; vesting authority in
16 the Oklahoma district courts to enforce certain
provisions and settle disputes; declaring certain
17 business information to be proprietary; requiring
certain filed information be treated in a
18 confidential manner and subject to confidentiality
order; requiring certain information to be filed
19 under seal; allowing court to seek certain
information; providing for noncodification; providing
20 for codification; and providing an effective date.

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

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

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

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

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

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

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

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

17 Net Pole Investment = Gross Pole Investment (Account 364) -

18 Accumulated Depreciation (Poles) - Accumulated Deferred Taxes

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

21 Administrative = Total Admin and General Expense ÷ Net Plant

22 Maintenance = Account 593 Expense ÷ Net Pole Investment

23 Depreciation = Gross Pole Investment ÷ Net Pole Investment x

24 Depreciation Rate

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

2 Return = 8%

3 Unusable Space = 25.0 ft

4 Occupied Space = 1 ft

5 Presumptive Default Values

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

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

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

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

20 C. Notwithstanding the maximum pole attachment rate determined
21 in subsection B of this section, beginning on the effective date of
22 this act and for four (4) years thereafter, the rates charged by a
23 rural electric cooperative for new attachments to cooperative-owned
24 electric poles by providers of telecommunications, broadband, video,

1 Internet services, or any cooperative affiliate entity or subsidiary
2 company, under existing pole attachment license agreements or such
3 agreements entered into on or after the effective date of this act
4 shall not exceed One Dollar (\$1.00) per cooperative-owned electric
5 pole per year ("One Dollar Deal"), contingent upon the following:

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

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

13 3. One Dollar Deal attachments shall be capable of providing
14 wire-line broadband service at speeds of one hundred (100) megabits
15 per second download and twenty (20) megabits per second upload. The
16 broadband service speeds listed in this paragraph shall be subject
17 to change or update when, or if, the Federal Communications
18 Commission makes new rulings related to its definition of broadband
19 and when that new definition exceeds a speed of one hundred (100)
20 megabits per second download and twenty (20) megabits per second
21 upload; and

22 4. Within sixty (60) days of the end of each calendar year,
23 applicable attaching providers shall submit written reports and
24 information to the appropriate rural electric cooperative evidencing

1 compliance with all One Dollar Deal attachment requirements. The
2 evidence of compliance shall include the customers served, customers
3 passed, service level offered, and specific qualifying poles
4 attached to that qualify for the One Dollar Deal. The intentional
5 submission of any incomplete or any false information pursuant to
6 this section shall result in an administrative penalty of One
7 Hundred Dollars (\$100.00) a day for the first thirty (30) days, Five
8 Hundred Dollars (\$500.00) a day for the next thirty (30) days, and
9 One Thousand Dollars (\$1,000.00) every day thereafter until accurate
10 data is presented.

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

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

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

1 G. Rural electric cooperatives shall be required to submit
2 presumptive default values to retail broadband providers regarding
3 pole attachments and shall provide the requested data within sixty
4 (60) days upon the execution of a signed letter of intent and
5 nondisclosure agreement. The intentional submission of any
6 incomplete or any false data pursuant to this section shall result
7 in an administrative penalty of One Hundred Dollars (\$100.00) a day
8 for the first thirty (30) days, Five Hundred Dollars (\$500.00) a day
9 for the next thirty (30) days, and One Thousand Dollars (\$1,000.00)
10 every day thereafter until accurate data is presented.

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

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

- 4 a. 108 - Accumulated Provision for Depreciation of
- 5 Electric Utility Plant,
- 6 b. 190 - Accumulated Deferred Income Taxes,
- 7 c. 281 - Accumulated Deferred Income Taxes - Accelerated
- 8 Amortization Property,
- 9 d. 282 - Accumulated Deferred Income Taxes - Other
- 10 Property,
- 11 e. 283 - Accumulated Deferred Income Taxes - Other,
- 12 f. 364 - Poles, Towers, and Fixtures,
- 13 g. 365 - Overhead Conductors and Devices,
- 14 h. 369 - Services,
- 15 i. 408.1 - Taxes - Property,
- 16 j. 409.1 - Income Taxes, Utility Operating Income,
- 17 k. 410.1 - Provision for Deferred Income Taxes, Utility
- 18 Operating Income,
- 19 l. 411.1 - Provision for Deferred Income Taxes - Credit,
- 20 Utility Operating Income,
- 21 m. 411.4 - Investment Tax Credit Adjustments, Utility
- 22 Operations, and
- 23 n. 593 - Maintenance of Overhead Lines;

24

- 1 2. Number of poles owned, leased, or operated by the electric
2 cooperative;
- 3 3. Number of attachments on poles owned, leased, or operated by
4 the electric cooperative;
- 5 4. Average height of poles owned, leased, or operated by the
6 electric cooperative;
- 7 5. Cooperative-defined percentage of usable space on poles
8 owned, leased, or operated by the electric cooperative; and
- 9 6. Cooperative's established rate of return.

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

11 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
12 April 14, 2022 - DO PASS

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