

Republic of the Philippines
House of Representatives
Quezon City

THIRTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4079



Introduced by Representative Joseph A. Santiago

EXPLANATORY NOTE

This bill seeks to empower the National Telecommunications Commission (NTC) to regulate and supervise the construction, use and maintenance of electric poles by Cable Television (CATV) Operators and Providers in the country.

The 1987 Constitution recognizes the right of the people to information. The latest digital technologies combined with optical networks make it possible for a person to easily access a superhighway of information.

Since the inception of cable television, cable companies have sought the means to run a wire into the home of each subscriber. They have found it convenient, and often essential, to lease space for their cables on telephone and electric utility poles. Utilities, in turn, have found it convenient to charge monopoly rents. For this reason, the cable companies and other telecommunication service providers complain of the exorbitant rates of rents for poles attachments imposed to them by the public utility providing electric service, which in turn the cost is passed on the cable television subscribers.

There is a need, therefore to regulate the use of electric poles and other support structures related thereto in order to; first, encourage the growth and development of cable and telecommunications systems; second, to encourage them to provide the widest possible diversity of information sources and services to the public; and lastly to promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

It is also necessary to provide a framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and service to the Filipino people.

Hence, the immediate passage of this bill is earnestly sought.


JOSEPH A. SANTIAGO

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AN ACT
REGULATING THE USE OF ELECTRIC POLES AND FOR OTHER PURPOSES

Be enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

Section 1. **Title.** This Act shall be known as the "Pole Regulation Act of 2005."

Section 2 **Declaration of Policy.** - It is the declared policy of the State to regulate the use, rates, terms, and conditions for pole attachments in order to promote and encourage innovation and competition among the providers of multiple communications services which will provide wide access in the digital technology and optical networks. It shall guarantee the right-of-way for other telecommunications services from electric providers within the frame work of just and fair play.

Section 3. **Definition of Terms.** - For purposes of this Act, the following terms shall be used:

- a. **Public utility** - Includes any person, firm, or corporation, except a publicly owned public utility, which owns or controls, or in combination jointly owns or controls, support structures or rights-of-way used or useful, in whole or in part, for wire communication.
- b. **Support structure** - includes, but is not limited to, a utility pole, anchor, duct, conduit, manhole, or handhole.
- c. **Pole attachment** - means any attachment to surplus space, or use of excess capacity, by a cable television corporation for a wire communication system on or in any support structure located on or in any right-of-way or easement owned, controlled, or used by a public utility.
- d. **Surplus space** - means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the authority concerned, to allow its use by a cable television corporation for a pole attachment.
- e. **Excess capacity** - means volume or capacity in a duct, conduit, or support structure other than a utility pole or anchor which can be used, pursuant to the orders and regulations of the authority concerned, for a pole attachment.
- f. **Usable space** - means the total distance between the top of the utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance.
- g. **Minimum allowable vertical clearance** - means the minimum clearance for communication conductors along rights-of-way or other areas as specified in the orders and regulations of the commission.
- h. **Rearrangements** - means work performed, at the request of a cable television corporation, to, on, or in an existing support structure to create such surplus space or excess capacity as is necessary to make it usable for a pole attachment, When an existing support structure

does not contain adequate surplus space or excess capacity and cannot be so rearranged as to create the required surplus space or excess capacity for a pole attachment. "Rearrangements" shall include replacement, at the request of a cable television corporation or telecommunications carrier, of the support structure in order to provide adequate surplus space or excess capacity.

- i. **Annual cost of ownership** - means the sum of the annual capital costs and annual operation costs of all similar support structure which shall be the average costs of all similar support structure owned by the public utility. The term does not include costs for any property not necessary for a pole attachment.
- j. **Cable system** - means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community.
- k. **Telecommunication service** - refers to a service that allows the user to relay and receive voice, data, electronic messages, written or printed matter, fixed or moving pictures, words, music or visible or audible signals or any control signals of any design and for any purpose by wire, radio, or other electromagnetic, spectral, optical or technological means.

Section 4. **Regulating Body** - The National Telecommunications Commission (NTC) is hereby designated as the agency responsible and authorized to regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms and conditions.

The NTC shall promulgate rules and regulations to carry out the provisions of this Act.

Section 5. Powers, Duties and Functions – The NTC as a Pole Regulatory Board shall have the following powers and functions;

- a.) To coordinate the conduct of regulation of electric poles, including the monitoring and surveillance thereof;
- b.) To set guidelines and procedures related to the construction, use and maintenance of electricity poles;
- c.) To prescribe the necessary rules and regulations, policies and guidelines for the effective implementations of this Act;
- d.) To perform such other powers and functions as maybe provided for by law.

Section 6. **Non-discriminatory access** -

- 1. A public utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned and controlled by it.
- 2. Notwithstanding the above provision, a public utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.

Section 7. **Value Added Services** – Cable service and telecommunications service providers shall not be prohibited to offer and carry additional value added services, such as but not limited to internet, fax, data, voice and other multiple communications services or convergent technologies once the attachment of pole agreement has been granted by the public utility providing electric service. No additional charges shall be imposed for the value added services offered herein.

Section 8. **Determination of just and reasonable rates** - For purposes of this Act, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the

pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

The public utility providing electric service shall only charge on the basis of the support structures actually used by the telecommunications service or cable service provider.

Section 9. Imputation to Costs of Pole Attachment Rate - A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services, (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this Act.

Section 10. Modification or Alteration of Support Structure - Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.

Section 11. Costs of Rearranging or replacing attachment - An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs or rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity, including the owner of such pole, duct, conduit or right-of-way.

Section 12. Enforcement of rates in case of disagreement - Whenever a public utility and a telecommunications or cable service providers are unable to agree upon the terms, conditions, or annual compensation or rentals for pole attachments or the terms, conditions, or costs of rearrangements, the commission shall establish and enforce the rates, terms, and conditions for pole attachments and rearrangements so as to assure a public utility the recovery of both of the following:

- (1) A one-time reimbursement for actual costs incurred by the public utility for rearrangements performed at the request of the cable television corporation.
- (2) Annual recurring fee computed as follows:

(a) For each pole and supporting anchor actually used or contacted by the telecommunications and cable service providers, for a period of five years following the effectivity of this Act, the annual fee shall be one hundred seventy five pesos (P175.00). Thereafter, the annual fee shall be two hundred pesos (P200.00) or five (5%) percent of the public utility's annual cost of ownership for the pole and supporting anchor, whichever is higher, except that if a public utility applies for establishment of a fee in excess of two hundred pesos (P200.00) under this Act, the annual fee shall be five (5%) percent of the public utility's annual cost of ownership for the pole and supporting anchor.

(b) For support structures used by the telecommunications and cable service providers, other than poles or anchors, a percentage of the annual cost of ownership for the support structure, computed by dividing the volume or capacity rendered unusable by the service providers' equipment by the total usable volume capacity.

Section 13. Necessity to use space or support structure - In the event that it becomes necessary for the public utility to use space or capacity on or in a support structure occupied by the telecommunications and cable service providers' equipment, they shall either (1) pay all costs for rearrangements necessary to maintain the pole attachment or (2) remove the equipment at their own expense.

Section 14. Compensation. - The officers and employees of NTC shall not receive additional compensation for the services rendered pursuant thereto.

Section 15. Appropriations. - The amount necessary for the implementation of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

Section 16. **Repealing Clause.**- All laws, Presidential Decrees, Executive orders, rules and regulations, or any other issuances or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

Section 17. **Effectivity.**- This Act shall take effect upon its approval and publication in two (2) newspaper of general circulation in Luzon and the entire country.

APPROVED.