

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
2nd Regular Session

HOUSE BILL NO. 5179

Introduced by : HON. SIGFRIDO R. TINGA

EXPLANATORY NOTE

POLE ATTACHMENTS ACT OF 2011

This bill seeks to regulate the use of utility poles, related support structures and rights of way for the transmission of TV or telecommunications signals, as well as the rates, terms and conditions for pole attachments under a just and reasonable framework, and hereby authorizing the National Telecommunications Commission as the implementing body.

The 1987 Constitution enshrines the state policy that recognizes the vital role of communication and information in nation-building. This policy can only be realized by providing the consuming public with wider and more affordable access to an improved variety of communication and information services. However, despite an impressive array of technologies and innovations, the cable television and telecommunications industries have been and continue to be handicapped by the unavailability of utility poles and the lack of pole attachment regulations.

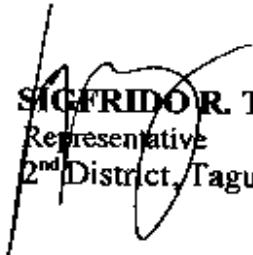
The cable television and telecommunications industries have been for several decades employing cables and related transmission equipment to reach the consuming public, thus necessitating utility poles, related support structures and rights of way to facilitate signal distribution. Unfortunately, these require significant financial investments which only a few can afford, such as pole-owning power utilities which in turn pass on the costs to the consuming public.

As such, the cable TV operators and telecommunications companies have often been constrained to pay arbitrary and exorbitant pole attachment fees to pole owners.

This has ultimately led to unjust enrichment on the part of the pole owner, curtailed service for the attaching entity, and doubled payments by the consuming public.

There is a need, therefore, to regulate the use of utility poles, related support structures and rights of way for the transmission of TV or telecommunications signals, as well as the rates, terms and conditions for pole attachments in order to promote and protect the growth of the cable television and telecommunications industries, and for the ultimate purpose of providing the consuming public with wider and more affordable access to an improved variety of services. The State shall guarantee the right of cable TV operators and telecommunications companies to secure and use their own or to have and maintain access to utility poles, related support structures and rights of way used or useful, in whole or in part, in the transmission of TV or telecommunications signals under a just and reasonable framework.

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



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**AN ACT REGULATING POLES, POLE ATTACHMENTS
AND FOR OTHER PURPOSES**

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

Section 1. Short Title - This Act shall be known as the "Pole Attachments Act of 2011".

Section 2. Declaration of Policy - It is the declared policy of the State to regulate the use of utility poles, related support structures and rights of way for the transmission of TV or telecommunications signals, as well as the rates, terms and conditions for pole attachments in order to promote and protect the growth of the cable television and telecommunications industries, and for the ultimate purpose of providing the consuming public with wider and more affordable access to an improved variety of services. The State shall guarantee the right of cable TV operators and telecommunications companies to secure and use their own or to have and maintain access to utility poles, related support structures and rights of way used or useful, in whole or in part, in the transmission of TV or telecommunications signals under a just and reasonable framework.

Section 3. Construction and Interpretation - The provisions of this Act shall be liberally construed in order to carry out the declared policy of the State.

Accordingly, reference may be made to the recognized standards of safety, industry practices and generally accepted engineering principles.

Section 4. Definition of Terms

- a. **"Pole Owner"** refers to an entity, that may be a power or other public utility, a telecommunications company, a cable TV operator, a local cooperative, a municipal corporation or a property developer, that owns utility poles, related support structures and/or controls rights of way used or useful, in whole or in part, in the transmission of TV or telecommunications signals to subscribers.
- b. **"Attaching Entity"** refers to an entity, that may be a cable TV operator or a telecommunications company, that makes or maintains a pole attachment.
- c. **"Pole Attachment"** refers to the attachment made by an attaching entity to a pole owner's utility pole, related support structure or right of way used or useful, in whole or in part, in the transmission of TV or telecommunications signals to subscribers.
- d. **"Pole Attachment Fee"** refers to the amount to be paid by the attaching entity to the pole owner in exchange for the pole attachment, payable at the end of every quarter of a year on a per pole basis.
- e. **"Additional Maintenance Expense"** refers to the necessary quarterly cost directly and exclusively pertaining to preserving the integrity and proper functioning of the pole attachment. It forms part of the pole attachment fee.
- f. **"Pole Premium"** refers to the amount, equivalent to Twelve percent (12%) of the additional maintenance expense, payable to the pole owner as premium for the pole attachment. It forms the other part of the pole attachment fee.
- g. **"Commission"** refers to the National Telecommunications Commission as the implementing body of this Act.

Section 5. Formula for the Pole Attachment Fee – The pole attachment fee shall be equal to the sum of the additional maintenance expense and the pole premium, wherein:

a. For the purposes of this Act, the additional maintenance expense shall be disputably presumed to be equal to Twenty-Five Pesos (Php 25.00).

Provided, that the foregoing disputable presumption may be adjusted by the Commission Five (5) years after the passage of this Act and every Five (5) years thereafter, as warranted by the arguments and proofs submitted by the parties. In no case shall the adjustment be more than Twenty percent (20%) of the previous amount of the disputable presumption.

Provided further, that the foregoing disputable presumption may be disputed on a case to case basis by the pole owner or the attaching entity, by way of submission to the Commission of proof of the necessary quarterly cost directly and exclusively pertaining to preserving the integrity and proper functioning of the pole attachment. During the said dispute, any payments made would utilize the foregoing disputable presumption subject to refund or additional payment, as and after determined by the Commission.

b. For the purposes of this Act, the pole premium shall be equal to Twelve percent (12%) of the additional maintenance expense.

c. For the purposes of this Act, the number of utility poles for which pole attachment fees are payable shall be equal to the number of utility poles applied for pole attachment by the attaching entity minus the number of pole attachments validly denied by the pole owner.

Provided, that the foregoing number of utility poles for which pole attachment fees are payable may be disputed on a case to case basis by the pole owner or the attaching entity, by way of submission to the Commission of proof pertaining to the actual number of utility poles subject to pole attachments. During the said dispute, any payments made would utilize the previous number of utility poles for which pole attachment fees were paid subject to refund or additional payment, as and after determined by the Commission.

Section 6. Nondiscriminatory Access – A pole owner shall provide and maintain nondiscriminatory access to all utility poles and related support structures it owns and rights of way it controls in exchange for the payment of the pole attachment fee, on terms and conditions uniform to all attaching entities, including its own affiliates or subsidiaries. For this purpose the pole owner shall submit to the Commission a copy of all pole attachment contracts it has entered into.

Provided, that a pole owner may validly deny in writing a pole attachment to a utility pole or related support structure it owns or a right of way it controls by reason of recognized standards of safety, industry practices or generally accepted engineering principles.

Provided further, that in case a pole owner validly denies a pole attachment, or removes the same due to an emergency, and thereafter the reason for such denial or removal ceases or additional capacity becomes available for a pole attachment, the pole owner shall be bound to offer the capacity for a pole attachment to the denied or previous attaching entity first, before occupying the same or offering it to other potential attaching entities, including its own affiliates or subsidiaries. Any removal not due to an emergency shall require prior written notice to the attaching entity.

Section 7. Rights and Responsibilities of the Parties – In addition to those provided for by the other provisions of this Act and by other relevant laws, the pole owner and the attaching entity shall have the following rights and responsibilities:

a. The actual pole attachments shall be made, modified and removed at the cost and responsibility of the attaching entity whereas the maintenance and replacement of the utility poles, related support structures and rights of way shall be at the cost and responsibility of the pole owner.

b. As far as practicable, the attaching entity shall make, modify and remove the pole attachments in a manner that preserves the integrity and proper functioning of the pole owner's utility poles, related support structures and rights of way, and likewise the pole owner shall conduct the maintenance and replacement of the utility poles, related support structures and rights of way in a manner that also preserves the integrity and proper functioning of the pole attachments.

c. In case of disputes between the parties to a proposed, pre-existing or previous pole attachment, the same shall be submitted to the Commission's determination subject to the relevant procedural and evidentiary rules.

Section 8. Non-availability of Utility Poles, Related Support Structures and Rights of Way – In case utility poles, related support structures and/or rights of way used or useful, in whole or in part, in the transmission of TV or telecommunications signals are not available for pole attachment, legitimate cable TV operators and telecommunications companies shall have the option to secure and use their own provided the following requirements are complied with:

a. That the said utility poles, related support structures and rights of way shall be secured and used by legitimate cable TV operators and telecommunications companies at their own cost and responsibility.

b. That the said utility poles, related support structures and rights of way shall be secured and used with due reference to the recognized standards of safety, industry practices and generally accepted engineering principles.

c. That the said utility poles, related support structures and rights of way shall be subject to the same pole attachment rules and regulations imposed by this Act.

Section 9. Penalty for Violation - Whenever a party is found to have violated any provision of this Act or of any obligation or contract covered by it, upon the complaint of the violated party and as determined by the Commission, the violating party shall be compelled to rectify the violation at its own cost without prejudice to the applicable civil or criminal liabilities provided for by other relevant laws.

Section 10. Implementing Rules and Regulations - The Commission as the implementing body of this Act shall perform the functions and duties necessary to carry out its purposes, including the resolution of disputes and complaints and the promulgation of the appropriate implementing rules and regulations.

Provided, that the implementing rules and regulations shall, as far as practicable, be similar to the current procedural and evidentiary rules that the Commission follows and that the same should be promulgated within Two (2) months after the effectivity of this Act.

Section 11. Appropriations - The amount necessary to carry out the provisions of this Act shall be provided in a supplemental budget or included in the General Appropriations Act of the year of its enactment into law. Thereafter, the expenses for its continued implementation shall be included in the subsequent General Appropriations Act.

Section 12. Transitory Provision - Acts and contracts of parties executed before the effectivity of this Act shall be governed by the laws in force at the time of their execution, except that any revocation, modification or novation made after the effectivity of this Act shall be subject to the provisions of this law.

Section 13. Separability Clause - If any provision of this Act is held invalid, all other provisions not affected thereby shall remain valid.

Section 14. 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 15. Effectivity - This Act shall take effect Fifteen (15) days after publication in Two (2) newspapers of general circulation.

APPROVED