

SENATE

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S. B. No. **2636**

Introduced by Senator FRANCIS G. ESCUDERO

AN ACT
REGULATING POLES, POLE ATTACHMENTS
AND FOR OTHER PURPOSES

EXPLANATORY NOTE

This bill is anchored on the State's recognition of the vital role of communication and information in nation building.¹

As a State policy, it is but incumbent upon Congress to define and seek a just and equitable legal framework on how 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, which can be done through the National Telecommunications Commission (NTC).

It is envisioned that this proposed measure shall provide the consuming public with wider, and more affordable and improved access to a variety of communication and information services without any constitutional impediment on property and other related rights.

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. Concomitantly, formulas and concepts have to be proposed as an institutionalized mechanism to address the issue at hand. Moreover, a similar proposal, House Bill No. 3730, is already pending in the House of Representatives.

Given the foregoing, this bill is respectfully submitted for immediate deliberation and passage.


FRANCIS G. ESCUDERO

¹ Section 24, Article II, Constitution.

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

1 **Section 1. Short Title** - This Act shall be known as the "Pole Attachments Act of 2015".
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4 **Section 2. Declaration of Policy** - It is the declared policy of the State to regulate the use
5 of utility poles, related support structures and rights of way for the transmission of TV or
6 telecommunications signals, as well as the rates, terms and conditions for pole attachments in
7 order to promote and protect the growth of the cable television and telecommunications
8 industries, and for the ultimate purpose of providing the consuming public with wider and
9 more affordable access to an improved variety of services. The State shall guarantee the right
10 of cable TV operators and telecommunications companies to secure and use their own or to
11 have and maintain access to utility poles, related support structures and rights of way used or
12 useful, in whole or in part, in the transmission of TV or telecommunications signals under a
13 just and reasonable framework.
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16 **Section 3. Construction and Interpretation** - The provisions of this Act shall be liberally
17 construed in order to carry out the declared policy of the State. Accordingly, reference may be
18 made to the recognized standards of safety, industry practices and generally accepted
19 engineering principles.
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22 **Section 4. Definition of Terms**
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24 a. "Pole Owner" refers to an entity, that may be a power or other public utility, a
25 telecommunications company, a cable TV operator, a local cooperative, a municipal
26 corporation or a property developer, that owns utility poles, related support structures
27 and/or controls rights of way used or useful, in whole or in part, in the transmission of
28 TV or telecommunications signals to subscribers.

29 b. "Attaching Entity" refers to an entity, that may be a cable TV operator or a
30 telecommunications company, that makes or maintains a pole attachment.
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32 c. "Pole Attachment" refers to the attachment made by an attaching entity to a pole
33 owner's utility pole, related support structure or right of way used or useful, in whole
34 or in part, in the transmission of TV or telecommunications signals to subscribers.

1
2 **d. "Pole Attachment Fee"** refers to the amount to be paid by the attaching entity to the
3 pole owner in exchange for the pole attachment, payable at the end of every quarter of a
4 year on a per pole basis.

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6 **e. "Additional Maintenance Expense"** refers to the necessary quarterly cost directly
7 and exclusively pertaining to preserving the integrity and proper functioning of the
8 pole attachment. It forms part of the pole attachment fee.

9
10 **f. "Pole Premium"** refers to the amount, equivalent to Twelve percent (12%) of the
11 additional maintenance expense, payable to the pole owner as premium for the pole
12 attachment. It forms the other part of the pole attachment fee.

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14 **g. "Commission"** refers to the National Telecommunications Commission as the
15 implementing body of this Act.

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

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

23
24 *Provided,* that the foregoing disputable presumption may be adjusted by the
25 Commission Five (5) years after the passage of this Act and every Five (5) years
26 thereafter, as warranted by the arguments and proofs submitted by the parties. In no
27 case shall the adjustment be more than Twenty percent (20%) of the previous amount of
28 the disputable presumption.

29
30 *Provided further,* that the foregoing disputable presumption may be disputed on a case
31 to case basis by the pole owner or the attaching entity, by way of submission to the
32 Commission of proof of the necessary quarterly cost directly and exclusively pertaining
33 to preserving the integrity and proper functioning of the pole attachment. During the
34 said dispute, any payments made would utilize the foregoing disputable presumption
35 subject to refund or additional payment, as and after determined by the Commission.

36
37 **b.** For the purposes of this Act, the pole premium shall be equal to Twelve percent
38 (12%) of the additional maintenance expense.

39
40 **c.** For the purposes of this Act, the number of utility poles for which pole attachment
41 fees are payable shall be equal to the number of utility poles applied for pole
42 attachment by the attaching entity minus the number of pole attachments validly
43 denied by the pole owner.

44
45 *Provided,* that the foregoing number of utility poles for which pole attachment fees are
46 payable may be disputed on a case to case basis by the pole owner or the attaching
47 entity, by way of submission to the Commission of proof pertaining to the actual
48 number of utility poles subject to pole attachments. During the said dispute, any
49 payments made would utilize the previous number of utility poles for which pole
50 attachment fees were paid subject to refund or additional payment, as and after
51 determined by the Commission.

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54 **Section 6. Nondiscriminatory Access** - A pole owner shall provide and maintain
55 nondiscriminatory access to all utility poles and related support structures it owns and rights

1 of way it controls in exchange for the payment of the pole attachment fee, on terms and
2 conditions uniform to all attaching entities, including its own affiliates or subsidiaries. For this
3 purpose the pole owner shall submit to the Commission a copy of all pole attachment
4 contracts it has entered into.

5
6 *Provided*, that a pole owner may validly deny in writing a pole attachment to a utility
7 pole or related support structure it owns or a right of way it controls by reason of
8 recognized standards of safety, industry practices or generally accepted engineering
9 principles.

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

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

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

28
29 b. As far as practicable, the attaching entity shall make, modify and remove the pole
30 attachments in a manner that preserves the integrity and proper functioning of the pole
31 owner's utility poles, related support structures and rights of way, and likewise the pole
32 owner shall conduct the maintenance and replacement of the utility poles, related
33 support structures and rights of way in a manner that also preserves the integrity and
34 proper functioning of the pole attachments.

35
36 c. In case of disputes between the parties to a proposed, pre-existing or previous pole
37 attachment, the same shall be submitted to the Commission's determination subject to
38 the relevant procedural and evidentiary rules.

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

47
48 a. That the said utility poles, related support structures and rights of way shall be
49 secured and used by legitimate cable TV operators and telecommunications companies
50 at their own cost and responsibility.

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

1 c. That the said utility poles, related support structures and rights of way shall be
2 subject to the same pole attachment rules and regulations imposed by this Act.
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5 **Section 9. Penalty for Violation** - Whenever a party is found to have violated any
6 provision of this Act or of any obligation or contract covered by it, upon the complaint of the
7 violated party and as determined by the Commission, the violating party shall be compelled to
8 rectify the violation at its own cost without prejudice to the applicable civil or criminal
9 liabilities provided for by other relevant laws.
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12 **Section 10. Implementing Rules and Regulations** - The Commission as the
13 implementing body of this Act shall perform the functions and duties necessary to carry out its
14 purposes, including the resolution of disputes and complaints and the promulgation of the
15 appropriate implementing rules and regulations. *Provided*, that the implementing rules and
16 regulations shall, as far as practicable, be similar to the current procedural and evidentiary
17 rules that the Commission follows and that the same should be promulgated within Two (2)
18 months after the effectivity of this Act.
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21 **Section 11. Appropriations** - The amount necessary to carry out the provisions of this
22 Act shall be provided in a supplemental budget or included in the General Appropriations Act
23 of the year of its enactment into law. Thereafter, the expenses for its continued implementation
24 shall be included in the subsequent General Appropriations Act.
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27 **Section 12. Transitory Provision** - Acts and contracts of parties executed before the
28 effectivity of this Act shall be governed by the laws in force at the time of their execution,
29 except that any revocation, modification or novation made after the effectivity of this Act shall
30 be subject to the provisions of this law.
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32 **Section 13. Separability Clause** - If any provision of this Act is held invalid, all other
33 provisions not affected thereby shall remain valid.
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36 **Section 14. Repealing Clause** - All laws, presidential decrees, executive orders, rules
37 and regulations or any other issuances or parts thereof inconsistent with this Act are hereby
38 repealed or amended accordingly.
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41 **Section 15. Effectivity** - This Act shall take effect Fifteen (15) days after publication in
42 Two (2) newspapers of general circulation.
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44
45 *Approved,*