



## **I. Background**

This case centers around the scope of a property interest granted over sixty years ago. In 1939, Alan and Myrna Krohn's predecessors in interest granted to the Hill County Electric Cooperative an easement that allows the cooperative to use their property for the purpose of constructing and maintaining "an electric transmission or distribution line or system." The easement further granted the right to remove trees and vegetation "to the extent necessary to keep them clear of said electric line or system."

In 1991, Hill County Electric entered into a "Joint Use Agreement" with a cable-television provider, which later assigned its rights under the agreement to Marcus Cable Associates, L.P. Under the agreement, Marcus Cable obtained permission from Hill County Electric to attach its cable lines to the cooperative's poles. The agreement permitted Marcus Cable to "furnish television antenna service" to area residents, and allowed the cable wires to be attached only "to the extent [the cooperative] may lawfully do so." The agreement further provided that the electric cooperative did not warrant or assure any "right-of-way privileges or easements," and that Marcus Cable "shall be responsible for obtaining its own easements and rights-of-way."

Seven years later, the Krohns sued Marcus Cable, alleging that the company did not have a valid easement and had placed its wires over their property without their knowledge or consent. The Krohns asserted a trespass claim, and alleged that Marcus Cable was negligent in failing to obtain their consent before installing the cable lines. The Krohns sought an injunction ordering the cable wires' removal, as well as actual and exemplary damages. In defense, Marcus Cable asserted a right to use Hill County Electric's poles under the cooperative's easement and under Texas statutory law.

Both parties filed motions for summary judgment. The Krohns moved for partial summary judgment, arguing that Marcus Cable's wires constituted a trespass. The Krohns requested the court to order the wires' removal and to set for trial the determination of damages. Marcus Cable filed a response and its own summary-judgment motion, arguing that both the Hill County Electric easement and section 181.102 of the Texas Utilities Code gave it the legal right to place its wires on the Krohns' property.

The trial court granted summary judgment in Marcus Cable's favor. The court of appeals reversed and remanded, holding that neither section 181.102 nor the easement allowed Marcus Cable's use. 43 S.W.3d at 579. We granted review to consider whether the cooperative's easement or section 181.102 permit Marcus Cable to attach cable-television lines to Hill County Electric's utility poles without the Krohns' consent.

## II. Common Law

A property owner's right to exclude others from his or her property is recognized as "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Dolan v. City of Tigard*, 512 U.S. 374, 384 (1994) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982) (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979))); *see also* II W. BLACKSTONE, BLACKSTONE'S COMMENTARIES 139 (Tucker ed. 1803). A landowner may choose to relinquish a portion of the right to exclude by granting an easement, but such a relinquishment is limited in nature. *Cf. San Jacinto Sand Co. v. Southwestern Bell Tel. Co.*, 426 S.W.2d 338, 345 (Tex. Civ. App.—Houston [14th Dist.] 1968, writ ref'd n.r.e.); *see generally* II GEORGE W. THOMPSON, THOMPSON ON PROPERTY §§ 315-16, 319, at 6-7, 14-16, 32-34. Unlike a possessory interest in land, an easement

is a nonpossessory interest that authorizes its holder to use the property for only particular purposes. *See* RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 1.2 cmt. d.

Marcus Cable claims rights under Hill County Electric's express easement, that is, an easement conveyed by an express grant. *See DeWitt County Elec. Coop., Inc. v. Parks*, 1 S.W.3d 96, 103 (Tex. 1999). While the common law recognizes that certain easements may be assigned or apportioned to a third party, the third party's use cannot exceed the rights expressly conveyed to the original easement holder. *See Cantu v. Cent. Power & Light Co.*, 38 S.W.2d 876, 877 (Tex. Civ. App.—San Antonio 1931, writ ref'd); *Keokuk Junction Ry. Co. v. IES Indus., Inc.*, 618 N.W.2d 352, 356, 362 (Iowa 2000); *Buhl v. U.S. Sprint Communications Co.*, 840 S.W.2d 904, 910 (Tenn. 1992); *cf. Carrithers v. Terramar Beach Cmty. Improvement Assoc.*, 645 S.W.2d 772, 774 (Tex. 1983) (“[A]n easement may not create a right or interest in a grantee's favor which the grantor himself did not possess.”). Marcus Cable's rights, therefore, turn on whether the cooperative's easement permits the Krohns' property to be used for the purpose of installing cable-television lines.

Marcus Cable raises three arguments to support its contention that the original easement encompasses cable-television use. First, it argues that easements must be interpreted to anticipate and encompass future technological developments that may not have existed when the easement was originally granted. Second, Marcus Cable contends that courts should give strong deference to the public policy behind expanding the provision of cable-television services. Third, Marcus Cable argues that its use is permitted because adding cable-television wires does not increase the burden on the servient estate. These arguments, however, ignore fundamental principles that govern interpreting easements conveyed by express

grant. Those principles lead us to conclude that the original easement does not encompass Marcus Cable's use.

### **A. Express Easements**

We apply basic principles of contract construction and interpretation when considering an express easement's terms. *DeWitt County*, 1 S.W.3d at 100; *Armstrong v. Skelly Oil, Co.*, 81 S.W.2d 735, 736 (Tex. Civ. App.—Amarillo 1935, writ ref'd). The contracting parties' intentions, as expressed in the grant, determine the scope of the conveyed interest. *See DeWitt County*, 1 S.W.3d at 103 (stating that "the scope of the easement holder's rights must be determined by the terms of the grant"); *see also Houston Pipe Line Co. v. Dwyer*, 374 S.W.2d 662, 664-65 (Tex. 1964) (holding that parties' intentions are determined by interpreting the real-property grant's language); *Garrett v. Dils Co.*, 299 S.W.2d 904, 906 (Tex. 1957) (same); *City of Dallas v. Etheridge*, 253 S.W.2d 640, 642 (Tex. 1952) (same); RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 4.1 (providing that an easement "should be interpreted to give effect to the intention of the parties ascertained from the language used in the instrument, or the circumstances surrounding the creation of the servitude, and to carry out the purpose for which it was created").

When the grant's terms are not specifically defined, they should be given their plain, ordinary, and generally accepted meaning. *DeWitt*, 1 S.W.3d at 101; *see also* RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 4.1 cmt. d ("[Easement] language should be interpreted to accord with the meaning an ordinary purchaser would ascribe to it . . . ."); RESTATEMENT (SECOND) OF CONTRACTS § 202(3)(a) ("Unless a different intention is manifested, where language has a generally prevailing meaning, it is

interpreted in accordance with that meaning.”). An easement’s express terms, interpreted according to their generally accepted meaning, therefore delineate the purposes for which the easement holder may use the property. *See DeWitt*, 1 S.W.3d at 100, 103; *see also Coleman v. Forister*, 514 S.W.2d 899, 903 (Tex. 1974); *Vahlsing v. Harrell*, 178 F.2d 622, 624 (5th Cir. 1949) (applying Texas law). Nothing passes by implication “except what is reasonably necessary” to fairly enjoy the rights expressly granted. *Coleman*, 514 S.W.2d at 903; *Bland Lake Fishing & Hunting Club v. Fisher*, 311 S.W.2d 710, 715-16 (Tex. Civ. App.–Beaumont 1958, no writ). Thus, if a particular purpose is not provided for in the grant, a use pursuing that purpose is not allowed. *See Coleman*, 514 S.W.2d at 903; *Kearney & Son v. Fancher*, 401 S.W.2d 897, 904-05 (Tex. Civ. App.–Fort Worth 1966, writ ref’d n.r.e.); *cf. Bickler v. Bickler*, 403 S.W.2d 354, 359 (Tex. 1966). If the rule were otherwise,

then the typical power line or pipeline easement, granted for the purpose of constructing and maintaining a power line or pipeline across specified property, could be used for any other purpose, unless the grantor by specific language negated all other purposes.

*Kearney & Son*, 401 S.W.2d at 904-05 (citing LANGE, 4 TEXAS PRACTICE, *Land Titles* § 384, at 173); *see also City of Pasadena v. California-Michigan Land & Water Co.*, 110 P.2d 983, 985 (Cal. 1941) (“It is not necessary for [the easement grantor] to make any reservation to protect his interests in the land, for what he does not convey, he still retains.”).

The common law does allow some flexibility in determining an easement holder’s rights. In particular, the manner, frequency, and intensity of an easement’s use may change over time to accommodate technological development. RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 4.10.

But such changes must fall within the purposes for which the easement was created, as determined by the grant's terms. *See id.* § 1.2 cmt. d (“The holder of the easement . . . is entitled to make only the uses reasonably necessary for the specified purpose.”); § 4.10 & cmt. a (noting that manner, frequency, and intensity of easement may change to take advantage of technological advances, but only for purposes for which easement was created); *see, e.g., Edgcomb v. Lower Valley Power & Light, Inc.*, 922 P.2d 850, 854-55, 858 (Wyo. 1996) (holding that, under easement granted for an electric or telephone line, the easement holder could increase the electricity-carrying capacity and replace the static-telephone line with fiber-optics line as a matter of “normal development of the respective rights and use”); *City Pub. Serv. Bd. of San Antonio v. Karp*, 585 S.W.2d 838, 841-42 (Tex. Civ. App.—San Antonio 1979, no writ) (holding that a “transformer easement” permitted its holder to replace a malfunctioning underground transformer with an aboveground one as “a matter of normal development”); *Lower Colo. River Auth. v. Ashby*, 530 S.W.2d 628, 629, 632-33 (Tex. Civ. App.—Austin 1975, writ ref’d n.r.e.) (holding that, under the electric-transmission easement at issue, the easement holder could replace wooden towers with new steel towers and could increase the electricity-carrying capacity); RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 4.10 illus. 13 (stating that, under a 1940s telephone easement, easement holder could mount transmitters on its poles for cellular-telephone transmissions unless doing so would unreasonably interfere with enjoyment of the servient estate). Thus, contrary to Marcus Cable’s argument, an express easement encompasses only those technological developments that further the particular purpose for which the easement was granted. *See* RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) §§ 1.2 cmt. d., 4.2 cmt. a, 4.10 & cmt. a. Otherwise, easements would effectively become possessory, rather than nonpossessory,

land interests. *See id.* § 1.2 cmt. d (distinguishing between an easement that permits its owner to use land for only specified purposes, and a possessory land interest that permits its owner to make any use of the property).

The emphasis our law places upon an easement’s express terms serves important public policies by promoting certainty in land transactions. In order to evaluate the burdens placed upon real property, a potential purchaser must be able to safely rely upon granting language. *See* RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 4.1 cmt. d. Similarly, those who grant easements should be assured that their conveyances will not be construed to undermine private-property rights — like the rights to “exclude others” or to “obtain a profit” — any more than what was intended in the grant. *See Loretto*, 458 U.S. at 436.

Marcus Cable suggests that we should give greater weight to the public benefit that results from the wide distribution of cable-television services, arguing that technological advancement in Texas will be substantially impeded if the cooperative’s easement is not read to encompass cable-television use.<sup>1</sup> But even if that were so, we may not circumvent the contracting parties’ intent by disregarding the easement’s express terms and the specific purpose for which it was granted. *See* RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 4.1 & cmt. d (indicating that a court may not adopt an easement interpretation based on public policy unless that interpretation is supported by the grant’s terms). Adhering to basic easement principles, we must decide not what is most convenient to the public or profitable to Marcus

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<sup>1</sup> We note that the summary-judgment evidence indicates that Marcus Cable has readily available alternatives to attaching its cable lines to Hill County Electric’s utility poles. Furthermore, it is undisputed that cable-television providers may place their lines on public property in unincorporated areas. *See* TEX. UTIL. CODE § 181.102.

Cable, but what purpose the contracting parties intended the easement to serve. *See Dauenhauer v. Devine*, 51 Tex. 480, 489-90 (1879). Hill County Electric could only permit Marcus Cable to use its easement “so long as that use is devoted exclusively to the purposes of the grant.” *Cantu*, 38 S.W.2d at 877.

Finally, Marcus Cable contends that its use should be allowed because attaching cable-television wires to Hill County Electric’s utility poles does not materially increase the burden to the servient estate. But again, if a use does not serve the easement’s express purpose, it becomes an unauthorized presence on the land whether or not it results in any noticeable burden to the servient estate. *See McDaniel Bros. v. Wilson*, 70 S.W.2d 618, 621 (Tex. Civ. App.—Beaumont 1934, writ ref’d) (“[E]very unauthorized entry upon land of another is a trespass even if no damage is done or the injury is slight . . . .”); *see also Rio Costilla Coop. Livestock Ass’n v. W.S. Ranch Co.*, 467 P.2d 19, 25 (N.M. 1970); *Beckwith v. Rossi*, 175 A.2d 732, 735-36 (Me. 1961). Thus, the threshold inquiry is not whether the proposed use results in a material burden, but whether the grant’s terms authorize the proposed use. With these principles in mind, we turn to the easement at issue in this case.

### **B. Hill County Electric’s Easement**

Both parties urge us to determine Marcus Cable’s easement rights as a matter of law. When an easement is susceptible to only one reasonable, definite interpretation after applying established rules of contract construction, we are obligated to construe it as a matter of law even if the parties offer different interpretations of the easement’s terms. *DeWitt*, 1 S.W.3d at 100. Because the easement here can be given a definite meaning, we interpret it as a matter of law.

The easement granted Hill County Electric the right to use the Krohns' property for the purpose of constructing and maintaining an "electric transmission or distribution line or system." The terms "electric transmission" and "electric distribution" are commonly and ordinarily associated with power companies conveying electricity to the public. *See, e.g., Texas Power & Light Co. v. Cole*, 313 S.W.2d 524, 526-27, 530 (Tex. 1958); *Resendez v. Lyntegar Elec. Coop., Inc.*, 511 S.W.2d 350, 352-53 (Tex. Civ. App.—Amarillo 1974, no writ); *Upshur-Rural Elec. Coop. Corp. v. State*, 381 S.W.2d 418, 424 (Tex. Civ. App.—Austin 1964, writ dismissed) (using terms electric transmission and/or distribution to describe equipment used by power companies to convey electricity); *see also* RESTATEMENT (THIRD) OF PROPERTY (SERVITUDES) § 4.10 illus. 3 & 12 (using "electric-transmission lines" to designate lines operated by power companies); TEX. UTIL. CODE § 39.157(a), (d)(3) (providing that Public Utility Commission shall regulate market-power abuses in the sale of electricity by utilities "providing electric transmission or distribution services"). Texas cases decided around the time the cooperative's easement was granted strongly suggest that this was the commonly understood meaning of those terms. *See, e.g., City of Bryan v. A&M Consol. Indep. Sch. Dist.*, 179 S.W.2d 987, 988 (Tex. Civ. App.—Waco 1944), *aff'd*, 184 S.W.2d 914 (Tex. 1945); *Texas-New Mexico Utils. Co. v. City of Teague*, 174 S.W.2d 57, 59 (Tex. Civ. App.—Fort Worth 1943, writ refused w.o.m.); *Arcola Sugar Mills Co. v. Houston Lighting & Power Co.*, 153 S.W.2d 628, 629-30 (Tex. Civ. App.—Galveston 1941, writ refused w.o.m.); *McCulloch County Elec. Coop., Inc. v. Hall*, 131 S.W.2d 1019, 1020, 1022 (Tex. Civ. App.—Austin 1939, writ dismissed); *Willacy County v. Central Power & Light Co.*, 73 S.W.2d 1060, 1061 (Tex. Civ. App.—San Antonio 1934, writ dismissed) (using term electric transmission to describe equipment used by power companies to convey

electricity). Accordingly, we construe the easement's terms to allow use of the property for facilities to transmit electricity.

Marcus Cable does not argue that the generally prevailing meaning of the easement's grant encompasses cable-television services. Instead, it claims that, for reasons of public policy, we should construe the easement to embrace modern developments, without regard to the easement's language. In support of that position, Marcus Cable cites a number of decisions in other jurisdictions that have allowed the use of easements predating cable technology to allow installation of cable transmission lines.

The cases Marcus Cable cites, however, involve different granting language and do not support the proposition that we may disregard the parties' expressed intentions or expand the purposes for which an easement may be used. To the contrary, those cases involve easements containing much broader granting language than the easement before us. Most of them involved easements granted for communications media, such as telegraph and telephone, in addition to electric utility easements. In concluding that the easements were broad enough to encompass cable, the reviewing courts examined the purpose for which the easement was granted and essentially concluded that the questioned use was a more technologically advanced means of accomplishing the same communicative purpose.

For example, in *Salvaty v. Falcon Cable Television*, the 1926 easement permitted its holder to maintain both electric wires *and* telephone wires. 212 Cal. Rptr. 31, 32, 35 (Cal. Ct. App. 1985). The court held that cable-television lines were within the easement's scope, observing that cable television is "part of the natural evolution of *communications* technology." *Id.* at 34-35 (emphasis added); *accord Witteman v. Jack Barry Cable TV*, 228 Cal. Rptr. 584, 589 (Cal. Ct. App. 1986) (same). Similarly, the

Fourth Circuit held that an easement allowing its holder to use the land for the purpose of maintaining pole lines for “electrical and telephone service” was sufficiently broad to encompass cable-television lines. *C/R TV, Inc. v. Shannondale, Inc.*, 27 F.3d 104, 106, 109-10 (4th Cir. 1994) (applying West Virginia law). In reaching its conclusion, the court relied on the similar communicative aspects of both “telephone services” and cable-television services. *Id.* at 109-10. Other cases *Marcus Cable* cites also involved easements granted for communications-transmission purposes. *See, e.g., Cousins v. Alabama Power Co.*, 597 So.2d 683, 686-87 (Ala. 1992) (involving easements — granted for the purpose of maintaining “electric transmission lines and all telegraph and telephone lines” — that the landowners conceded included the right to maintain fiber-optics telecommunications lines); *Jolliff v. Hardin Cable Television Co.*, 269 N.E.2d 588, 591 (Ohio 1971) (concluding that cable-television wires were a burden “contemplated at the time of the grants [to the power company], as evidenced by the specific reference to telegraph and telephone wires” in the 1940 easement); *Am. Tel. & Tel. Co. of Mass. v. McDonald*, 173 N.E. 502, 502-03 (Mass. 1930) (concluding that easement granted for the purpose of maintaining “lines of telephone and telegraph” could be apportioned by the easement holder to a telephone company seeking to install a telephone cable, and that “[n]othing granted to the [company] enables it to do anything which the original grantee could not have done”); *Henley v. Continental Cablevision of St. Louis County, Inc.*, 692 S.W.2d 825, 827, 829 (Mo. Ct. App. 1985) (concluding that cable television fell within the 1922 easement grantors’ expressed intention to provide “electric power and telephonic communications” to subdivision residents); *Hoffman v. Capitol Cablevision Sys., Inc.*, 383 N.Y.S.2d 674, 676, 677 (N.Y. App. Div. 1976) (involving easements for the “distribution of electricity and messages,” and concluding that cable-

television wires were no greater burden “than that contemplated by the original easements”).

We express no opinion about whether the cases Marcus Cable relies upon were correctly decided. But, unlike the cases Marcus Cable cites, Hill County Electric’s easement does not convey the right to use the property for purposes of transmitting communications. While cable television may utilize electrical impulses to transmit communications, as Marcus Cable claims,<sup>2</sup> television transmission is not a more technologically advanced method of delivering electricity. Thus, the above-referenced cases do not support Marcus Cable’s argument that the easement here encompasses the additional purpose of transmitting television content to the public.

Marcus Cable cites only two cases involving easements whose grants did not include telephone or telegraph services, and neither supports its position. In *Centel Cable Television, Inc. v. Cook*, the court interpreted easement language that permitted its holder to maintain “a line for the transmission and/or distribution of electric energy thereover, *for any and all purposes for which electric energy is now, or may hereafter be used.*” 567 N.E.2d 1010, 1014 (Ohio 1991) (emphasis added). Observing that cable-television broadcasting “*utilize[s]* . . . ‘electric energy,’” the court concluded that the grant language was broad enough to encompass cable television. *Id.* (emphasis added). And *Hise v. BARC Electric Cooperative*, 492 S.E.2d 154, 158 (Va. 1997), involved a right-of-way easement by prescription that had been used for cable-television lines during the prescriptive period and that was later widened through

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<sup>2</sup> Marcus Cable did not offer any evidence about the nature of cable-television transmissions; thus, the record is silent on this point. But we note that, in recent years, many telecommunications providers, including cable-television operators, have moved toward fiber-optics cables that use light lasers, rather than electrical impulses, to transmit communications over their lines to the public. *See, e.g.,* Mike Mills, *Fine Lines of Telecommunications*, THE WASH. POST, Aug. 5, 1996, at F17.

eminent domain. It did not involve a privately-negotiated, express easement. *See, e.g., Nishanian v. Sirohi*, 414 S.E.2d 604, 606 (Va. 1992) (“The use of an [express] easement must be restricted to the terms and purposes on which the grant was based.” (citing *Robertson v. Bertha Mineral Co.*, 104 S.E. 832, 834 (Va. 1920))). The easements in Marcus Cable’s cited cases are simply not comparable to the more limited, express easement presented here.

Finally, Marcus Cable cites *San Antonio & Aransas Pass Railway v. Southwestern Telegraph & Telephone Co.*, 55 S.W.117 (Tex. 1900), for the proposition that an easement must be interpreted to embrace technological change. But that case does not support the idea that a court may ignore the contracting parties’ intent as reflected in their written language. There, we were called upon to determine whether a statute granting condemnation power to “telegraph” companies applied equally to “telephone” companies. *Id.* Relying upon later statutory enactments that reflected the Legislature’s intent to treat both the same, and recognizing that telegraph and telephone are two different means of accomplishing the same communicative purpose, we held that the statute at issue applied to telephone companies. *Id.* at 118-19.

The dissenting Justice would hold that the easement could properly be read to encompass cable because electricity is used in the transmission of cable television signals. Under such a reading, however, the easement could also be used for telegraph or telephone lines. Obviously, the Krohns’ predecessors could have granted an easement for those purposes. But the easement’s specific terms cannot be read so broadly.

In sum, the easement language here, properly construed, does not permit cable-television lines to

be strung across the Krohns' land without their consent. However laudable the goal of extending cable service might be, we cannot disregard the easement's express terms to enlarge its purposes beyond those intended by the contracting parties. To the extent the trial court granted Marcus Cable summary judgment on this basis, it erred, and the court of appeals correctly reversed.

### **III. Section 181.102**

Marcus Cable contends that, even if Hill County Electric's easement does not permit it to string cable-television wires across the Krohns' property, section 181.102 of the Texas Utilities Code does. That section, which allows cable-television service providers to utilize certain properties, provides:

- (a) In an unincorporated area, a person in the business of providing community antenna or cable television service to the public may install and maintain equipment through, under, along, across, or over a utility easement, a public road, an alley, or a body of public water in accordance with this subchapter.
- (b) The installation and maintenance of the equipment must be done in a way that does not unduly inconvenience the public using the affected property.

TEX. UTIL. CODE § 181.102.

Marcus Cable argues that the statute's plain language encompasses private easements like the one at issue here. Specifically, Marcus Cable contends that the term "utility easement" is not qualified by the term "public," as are other properties listed in the statute, and therefore the Legislature must have intended to cover private-easement grants to utility companies. The Krohns, on the other hand, argue that the statute's language, purpose, and legislative history support a distinction between general-use, public-utility easements and limited private-easement grants. We agree with the Krohns.

Our purpose in construing a statute is to determine the Legislature’s intent. *See Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001). As a starting point, we construe statutes as written and, if possible, ascertain intent from the statutory language. *Id.* (citing *Morrison v. Chan*, 699 S.W.2d 205, 208 (Tex. 1985)). We may also consider other factors, including the object the statute seeks to obtain, legislative history, and the consequences of a particular construction. *Id.*; *see also* TEX. GOV’T CODE § 311.023. Moreover, we must always consider a statute as a whole and attempt to harmonize its various provisions. *Helena Chem.*, 47 S.W.3d at 493; *see also* TEX. GOV’T CODE § 311.021. We must also, if possible, construe statutes to avoid constitutional infirmities. *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 380 (Tex. 1998); *Nootsie, Ltd. v. Williamson County Appraisal Dist.*, 925 S.W.2d 659, 662 (Tex. 1996); *see also* TEX. GOV’T CODE § 311.021(1).

Applying these principles, we hold that section 181.102 does not encompass private easements granted to utilities. The term “utility easement” appears in a list of properties — public roads, alleys, and public waterways — that are generally dedicated to public use. Subsection (b) goes on to prohibit cable companies from “unduly inconvenienc[ing] *the public using the affected property*,” indicating that the Legislature presumed public access to the property interests listed in subsection (a). TEX. UTIL. CODE § 181.102(b) (emphasis added). Thus, consistent with the nature of the other specified properties, and harmonizing the statute’s subsections, “utility easement” can reasonably be read to cover only public easements, that is, those easements dedicated to the public’s use. *See, e.g., Clark v. El Paso Cablevision, Inc.*, 475 S.W.2d 575, 577 (Tex. Civ. App.–El Paso 1971, no writ).

The limited legislative history that is available supports this interpretation. Statements were

repeatedly made in hearings indicating that section 181.102 was intended to encompass only public easements. *Hearings on S.B. 643 Before the House Comm. on Urban Affairs*, 68th Leg., R.S. (April 28, 1983). Finally, construing the statute to cover only public easements avoids constitutional infirmities. In *Loretto*, the United States Supreme Court analyzed a New York statute that granted cable-television companies the right to place their equipment on apartment buildings, and held that applying the statute to private property would effect a “taking” in violation of the Fifth Amendment. *Loretto*, 458 U.S. at 421. The Court reasoned that “a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve,” and that “permanent occupations of land by such installations as telegraph and telephone lines . . . or wires are takings even if they occupy only relatively insubstantial amounts of space and do not seriously interfere with the landowner’s use of the rest of his land.” *Id.* at 426, 430. We also note that a number of federal courts, construing the Cable Communications Policy Act, have recognized the constitutional concerns that would arise from requiring private parties to grant property access to uninvited cable companies whenever a private easement has been granted to other specific service providers. *See, e.g., Cable Ariz. Corp. v. CoxCom, Inc.*, 261 F.3d 871, 876 (9th Cir. 2001); *TCI of N.D., Inc. v. Schriock Holding Co.*, 11 F.3d 812, 815 (8th Cir. 1993); *Cable Holdings of Ga., Inc. v. McNeil Real Estate Fund VI, Ltd.*, 953 F.2d 600, 604-05 (11th Cir.), *cert. denied*, 506 U.S. 862 (1992); *Cable Invs., Inc. v. Woolley*, 867 F.2d 151, 159-60 (3d Cir. 1989). Thus, construing section 181.102 to cover private property could have significant constitutional implications.

In sum, we hold that section 181.102 does not cover private-easement grants, like the one at issue

here, that are negotiated between owners of private property and individual utility companies.<sup>3</sup>

#### **IV. Conclusion**

We hold that Hill County Electric's easement does not convey the right to string cable-television wires over the Krohns' private property. Nor does section 181.021 confer such a right upon Marcus Cable, because the statute covers only utility easements that are dedicated to public use. Accordingly, we affirm the court of appeals' judgment reversing and remanding this case to the trial court for further proceedings.

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Harriet O'Neill  
Justice

OPINION DELIVERED: November 5, 2002

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<sup>3</sup> In *Inwood West Civic Association v. Touchy*, 754 S.W.2d 276, 277 (Tex. App–Houston [14th Dist.] 1988, orig. proceeding), in the course of considering a pre-trial discovery dispute, the court stated in dicta that section 181.102 gives “cable television companies free access to utility easements across private property for the installation of their equipment.” We disapprove this statement.