



Utility Pole Attachments

Congress Should Continue to Exempt Electric Cooperatives from FCC Pole Attachment Regulations

Issue. As Congress considers the Federal Communications Commission’s (“FCC”) recommendations to promote the deployment of broadband services in the “National Broadband Plan (NBP)” it should maintain the cooperative exemption from the federal pole attachment statute and reject the FCC’s recommendation to subject cooperatives to its pole attachment regulations.

Background. In 1978, Congress acted to speed deployment of cable television service by amending the 1934 Communications Act. Among other initiatives, Congress provided for federal regulation of pole attachments. It gave the FCC jurisdiction over rates, terms and conditions for cable lines attached to poles owned by investor-owned utilities unless a state chose to regulate pole attachments.

The 1996 Telecommunications Act further amended the pole attachment provisions to: (1) to mandate access to utility poles for cable and telecommunications attachments; and (2) to provide pole attachment rental rate formulas for telecommunications providers and cable TV providers. Recognizing the unique, locally-directed governance of electric cooperatives, Congress in 1978 exempted electric cooperatives from the pole attachment provisions and did not disturb that exemption in 1996.

During debates on the 1978 Pole Attachment statute, Congress expressly noted that, “cooperatively owned utilities, by and large, are located in rural areas where often over-the-air television service is poor. Thus customers of these utilities have an added incentive to foster the growth of cable television in their areas ... pole rates charged by municipally owned and cooperative utilities are already subject to a decision-making process based on constituent needs and interest.” Today’s electric cooperatives are similarly motivated by their consumers’ desire for broadband and other advanced services.

The NBP calls for “rental rates for pole attachments that are as low and close to uniform as possible ... to promote broadband deployment.” It also recommends that the FCC “implement rules that will lower the cost of the pole attachment make-ready process.” However, the NBP pole attachment recommendations rely too heavily on information provided by cable, telecommunications and broadband interests and neglect to address the costs and operational concerns these attachments create for utilities.

Electric cooperatives charge cost-based rates.

Co-op consumers should not have to subsidize telecommunications services.

Co-ops charge among the lowest rates for cable TV and telecommunications attachments. In 2003, NRECA estimated the average annual rate that co-ops charged per cable TV attachment was about \$10 per year.

In order to maintain 501(c)(12) cooperative tax-exempt status, cooperatives charge cost-based rates for their services, including pole attachments. Many cooperatives charge rates that do not fully recover all of their costs, especially when pole attachments cause operational or safety problems. If a federal uniform rate pushes attachment rates lower than actual costs, electric co-op consumers will be subsidizing cable, broadband and telecommunications providers, whether or not electric consumers want these other services.

The FCC hopes that lowering providers' costs to serve lower population areas will help speed broadband deployment. But, nothing in an artificially low pole attachment rate guarantees that service providers will: (1) deploy broadband service to unserved or underserved areas or, if they do serve these areas, (2) pass through this cost reduction to consumers.

Electric cooperatives want broadband and other advanced telecommunications services.

Electric cooperatives have an additional incentive to support the expansion of broadband and other advanced telecommunications capability in their communities with reasonable pole attachment rates and access procedures. Many cooperatives will require upgraded communications networks to support "Smart Grid" technologies that will enhance the efficiency and reliability of electric service. Currently, cooperatives are more inclined to build their own upgraded networks, because advanced services are not available from commercial providers throughout their electric service territories.

Safety and reliability of the electric distribution systems is our first priority.

Electric cooperative boards are responsible for ensuring that the integrity of the cooperatives' distribution lines and poles is maintained. Local regulation of pole attachments ensures that cooperative boards and management can facilitate the deployment of cable, telecommunications and broadband services while protecting the critical infrastructure that brings essential power to homes and businesses. Nearly three-quarters of electric cooperatives surveyed in 2003 indicated that third parties routinely make pole attachments incorrectly, often resulting in extra work for cooperative employees and sometimes creating unsafe conditions for line workers.

The current pole attachment regime works for cable, telecommunications and broadband service providers as well as cooperative pole owners.

In the 1978 statute and continued in the 1996 Act, Congress specifically allowed state pre-emption of federal regulation where states certify to the FCC that they regulate rates, terms and conditions for pole attachments. Twenty states and the District of Columbia have exercised this right to regulate pole attachments. Depending upon the scope of a state's public utility commission jurisdiction, some of these states oversee electric cooperatives' pole attachments.

Congress clearly expressed an interest in preserving a balance of state vs. federal authority, stating, "The Committee considers the matter of CATV pole attachments to be essentially local in nature, and that the various state and local regulatory bodies which regulate other practices of telephone and electric utilities are better equipped to regulate CATV pole attachments.... It is only because such state or local regulation currently does not widely exist that federal supplemental regulation is justified."

NRECA position. We urge Congress to maintain the federal pole attachment exemption for electric cooperatives.

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