

Pole Attachments and the Public Interest

Ensuring every household and business in the United States has access to vital communications services and the opportunity to benefit from advances in communications technology is one of the most urgent challenges we face today. Overcoming this challenge requires all stakeholders—every level of government, the private sector, and non-profit and civic organizations—to work together with a shared understanding that this persistent problem will not be solved by one-size-fits-all policies.

We urge policymakers to reject the effort by some to use the need for broadband deployment as an opportunity to push for top-down, preemptive policies that will not lead to increased deployment in areas long left un- or underserved. Attaching to poles is one example of the recent efforts to force ill-considered, sweeping policy changes that are not targeted at closing the digital divide, but rather are aimed at providing benefits to for-profit companies with no obligation to deploy broadband and at the expense of local taxpayers- and ratepayers.

Our utility and municipal pole owners review their attachment policies to ensure that they do not unreasonably inhibit broadband deployment, with the understanding that such policies also must protect local assets, public safety, lineworker safety, local ratepayers, and the community. Policymakers must understand this balance of interests, which investor-owned utilities (IOUs) do not confront in the same way as municipal, public power, and cooperative pole owners. Multiple federal and state entities have concluded that cost-based pole attachment fees are not a barrier to broadband deployment in rural areas. We believe these differences and the following principles support the long-standing legal framework in which municipalities, public power utilities and cooperatives, whose purpose is to serve the public interest, retain the flexibility and trust to act in the best interest of their communities.

1. Public power and cooperative electric utilities own, operate, and determine their attachment rates for poles in the public interest.

A pole attachment refers to the process by which communications companies can collocate communications infrastructure on existing electric utility poles. This reduces the number of poles that must be built to accommodate communications services, while reducing costs to users of both services by allowing providers to share costs. Rules governing electric pole attachments must balance the desire to accommodate users of both electric and communications services with concerns unique to electric utility poles, such as safety and reliability. Public power and cooperative electric utilities, which are accountable to their constituents and members, must grapple with additional interests and concerns other electric utilities do not confront.

In 1978, Congress passed the Pole Attachment Act, which added section 224 to the Communications Act of 1934, to require the FCC to establish subsidized rates for pole attachments. Under the law, public power utilities and rural electric cooperatives were exempted from this requirement, “because the pole attachment rates charged by

municipally owned and cooperative utilities [were] already subject to a local decision-making process based upon constituent needs and interests.” This exemption continued through multiple telecommunications reform efforts, including enactment of the Telecommunications Act of 1996, because Congress has maintained that the existing process remains appropriate and adequate given the fundamentally different structure and operations of public power and cooperative utilities. Failing to take local geographic, demographic, monetary, and technological differences into account when crafting pole attachment regulations will result in unworkable and potentially unsafe standards that will only stifle deployment and could reduce the reliability and resilience of all services and providers attached to the pole.

2. Local governments and utilities own and operate different types of poles that cannot be regulated in the same manner as standard utility poles.

Unlike private entities, local governments are responsible for traffic signals, streetlights, and other types of poles that serve primarily safety-enhancing purposes. And many utilities may install lighting-only poles for a municipality or property owner. Further, some of these poles are governed through agreements or tariffs dividing ownership and maintenance responsibilities between the municipality and another governmental unit, cooperative, or IOU. Subjecting local governments to the same regulations as private actors when determining who can access their infrastructure, and on what terms, ignores these significant differences and introduces confusion without expediting deployment.

3. Local governments, public power, and cooperatives must retain local control over local assets and maintain the ability to protect public interest.

One-size-fits-all pole attachment regulations are unworkable for municipal, public power, and cooperative pole owners given their diversity in size, operations, governance structures and, as previously addressed, the many types of poles they may own or control. Unlike IOUs, municipal and public power utility poles are owned by their customers or municipalities and are directly accountable to their constituents. Prescriptive regulations blur the lines of accountability, interfere with the ability of local government, public power, and cooperatives to act in the best interest of their constituents and usurp local police powers to protect the public health, safety, and welfare of their communities.

4. Flexibility is critical to ensuring ubiquitous broadband deployment.

Local governments, public power, and cooperatives must retain the flexibility to enact policies that ensure broadband facilities are deployed equitably and in a manner that meets community needs. Many have implemented policies intended to expedite broadband deployment, such as steeply discounted attachment rates or one-touch-make-ready and similar policies. Yet these policies are not the answer in every community, and in some cases may jeopardize ratepayers as well as public and worker safety without any impact on deployment. Superimposing one-size-fits-all pole attachment policies and rates on municipal, public power, and cooperative poles forces local ratepayers to bear the risk of

subsidizing for-profit communications providers. The digital divide is a many-faceted problem that requires the flexibility to implement a variety of solutions, not mandates imposed from remote policymakers unable to know or address the various causes of the divide in each community.

Local leaders have the clearest view of the assets their communities have and the challenges they face. Continuing to strip autonomy away from municipalities, public power, and cooperatives in favor of top-down, one-size-fits-all solutions will continue to widen the digital divide while preventing the officials with best experience from being able to help. Furthermore, additional regulations do nothing to address staffing decreases and budget shortfalls that resulted from the pandemic. Instead, they divert resources that could be used to address the digital divide toward compliance with rules ill-suited to address the unique needs of local communities.

Alternatively, facilitating information sharing across municipalities and providing communities with the resources they need to hire staff dedicated to developing efficient and equitable policies can support local efforts to expedite deployment through solutions that serve their residents and businesses.

Despite the same stated goal of “broadband deployment,” there is a clear difference in what shareholders of a for-profit communication provider want and the constituents of a local community need. We call on policymakers to disregard the misguided and unproven assertion that overhauling decades of municipal, public power and cooperative pole attachment policies will spur rapid deployment of affordable broadband to un- and underserved communities. No amount of “streamlining” will lead to deployment in areas long bypassed by communications providers.¹ Effectively cutting local governments, public power, and cooperatives out of the process only removes a critical partner in our collective effort to reach these communities.

¹ See, e.g., U.S. House of Representatives Committee on Energy and Commerce Subcommittee on Communications and Technology “Closing the Digital Divide: Broadband Infrastructure Solutions,” January 30, 2018, Preliminary Transcript, pp. 60-61) (Representative Doyle asked the panel, “does anyone here on the panel believe that we can successfully deploy unserved areas in rural America or underserved areas without some sort of Federal investment, that it can just be done through streamlining regulation and making deployment easy...?” Every witness, which included representatives from NTCA—The Rural Broadband Association, CTIA and USTelecom, among other industry and non-industry groups, replied that streamlining regulations would not address the problem); Verizon, Accelerating America: Affordability, Adoption, Access (Jan. 22, 2021) (<https://www.verizon.com/about/sites/default/files/verizon-accelerating-america-broadband-full-version.pdf>) (noting there will be “areas where it is impossible or impractical for private entities to build either wireless or home broadband”); Statement of then-FCC Chairman Ajit Pai, *Establishing a 5G Fund for Rural America*, Report and Order, 35 FCC Rcd. 12174, 12320 (2020) (recognizing that there are “areas of our country where the business case for building out 5G networks solely with private capital just doesn’t—and won’t—exist”).