



Pole Attachments Issue Brief

NOVEMBER 2016

SUMMARY

The Federal Communications Commission (FCC or Commission) has expanded access requirements and mandated reduced rates for electric, gas, and water utility pole attachments by third parties to provide a range of communications services. The Utilities Technology Council (UTC) believes that these access and rate regulations for pole attachments already threaten safety, reliability and security and subsidize the communications industry. Hence, UTC has cautioned against any further expansion of pole attachment regulations on utilities and has urged the FCC to protect the safety, reliability and security of utility infrastructure from unauthorized attachments and attachments that violate utility standards.

BACKGROUND

Since 1978, certain types of electric, gas and water utilities have been subject to federal or state regulation of the rates, terms and conditions for attachments by telecommunications carriers or cable television operators that are used to provide telecommunications or cable television service. The FCC has adopted increasingly onerous pole attachment rules that require utilities to provide pole attachment access at cost-based rates. Most recently, the Commission has implemented rate formulas that effectively create one rate for both cable television and telecommunications attachments – contrary to Section 224 of the Communications Act, which requires separate rates for telecommunications attachments that are greater than the rate for cable television attachments. Although utilities have challenged the constitutionality of these rates, the federal appeals courts have upheld them -- deferring to

the FCC's expertise and adhering to the notion that utilities are legally only entitled to recover their incremental costs. Utilities are currently challenging the latest FCC pole attachment rates and argue, correctly, that the FCC's regulated rate formulas are contrary to the statute and public policy. In addition to regulating the *rates* of pole attachments, the FCC has regulated the *access* to pole attachments. For example, the Commission has imposed strict timelines for processing applications and performing "make-ready" (this term generally refers to the modification of poles or lines or the installation of guys and anchors to accommodate additional facilities) to accommodate a request for access. This gives telecommunications carriers and cable TV companies the right to hire contractors to perform the make-ready and make attachments in the communications space on the poles, if the utility does not meet these timelines. These access requirements threaten to compromise safety and reliability; and the courts have agreed with utilities that such activities can be considered a "taking" of utilities' property under the Fifth Amendment of the U.S. Constitution. While the statute permits utilities to deny access to pole attachments for reasons of safety, reliability, insufficient capacity and generally applicable engineering purposes, as a practical matter, the FCC rules require utilities to rearrange their electric facilities to accommodate pole attachments when there is otherwise insufficient capacity on the pole. The FCC's decisions have a twofold impact: 1) utility customers are subsidizing cable and telecommunications companies; and 2) utilities are often forced to focus their sometimes limited resources on accommodating carriers' and cable

providers' make-ready demands rather than spending such resources on electric reliability and safety. Although carriers claim that pole attachments are a barrier to broadband deployment, it is important to note that carriers and cable companies lobbied hard for state laws that prevent municipal utilities from offering broadband in unserved and underserved areas, even when the carriers themselves do not seek to deploy such service. It is also worth noting that the FCC continues to conclude that broadband is not being deployed on a reasonable and timely basis, despite the FCC reducing pole attachment rates and imposing additional access requirements.

UTC POSITION

UTC opposes any further expansion of pole attachment regulations. While utilities in general support third-party pole attachments by communications and cable providers as an effective use of poles, ducts and conduits, the FCC rate regulations unfairly subsidize communications service providers and the mandatory access requirements threaten the safety, reliability and security of utility infrastructure. In addition, the cost savings to the communications providers from these subsidies have not been passed on to consumers nor have the access requirements accelerated the deployment of broadband into unserved areas.

UTC believes that pole attachment regulation should be balanced and should allow utilities to recover their costs and control access to their infrastructure. As communications service providers benefit from pole attachments, they should share in the costs of maintaining the underlying utility infrastructure. Ironically, pole attachment rates that deny full recovery of the costs associated with pole attachments systematically undermine investment in the underlying utility infrastructure that supports pole attachments.

Access rules should also be balanced to reflect the substantial interests that utilities have in maintaining

safety, reliability and security. They should provide utilities greater control over access for pole attachments, including control over the manner in which the work is performed and the space on the poles where attachments are made. UTC urges Congress to require the FCC to restore balance to the rules for rates and access for pole attachments, which will reduce disputes and accelerate the deployment of communications equipment on utility poles, ducts, conduits and rights of way.

ABOUT UTC

The Utilities Technology Council (UTC) is a global trade association dedicated to serving critical infrastructure providers. Through advocacy, education and collaboration, UTC creates a favorable business, regulatory and technological environment for companies that own, manage or provide critical telecommunications systems in support of their core business.

History: UTC was founded in 1948, to advocate for the allocation of additional radio spectrum for power utilities. Over the last 68 years, UTC has evolved into a dynamic organization that represents electric, gas and water utilities, as well as natural gas pipelines, critical infrastructure companies and other industry stakeholders.

UTC Contacts

Brett Kilbourne, VP & Deputy General Counsel

Email: Brett.Kilbourne@utc.org

Eric Wagner, Manager, Advocacy & Industry Affairs

Email: Eric.Wagner@utc.org