



Pole Attachments Issue Brief

OCTOBER 2017

SUMMARY

The Federal Communications Commission (FCC or Commission) in April 2017 issued a Notice of Proposed Rulemaking (NPRM), a Notice of Inquiry (NOI), and a Request for Comments proposing new pole attachment rules to “remove significant barriers to broadband infrastructure deployment and in turn increase broadband availability and competition in the provision of high-speed services.”

For the last several years, the FCC 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. Unfortunately, despite the intention to expand broadband, these access and rate regulations can instead threaten safety, reliability and security, as well as subsidize the communications industry. For these reasons, the Utilities Technology Council (UTC) cautions against any further expansion of pole attachment regulations on utilities and urges the FCC to consider the safety, reliability and security of the underlying infrastructure.

UTC POSITION

All utilities support and facilitate broadband expansion, either through granting access to their poles or investing in broadband services in areas where large, well-funded telecommunications providers are not serving.

Despite having inexpensive access to utility poles, communications providers are not passing these savings onto their consumers. Nor do they appear to be using these proceeds to accelerate the deployment of broadband into unserved areas. UTC believes that pole attachment regulation should be balanced by allowing utilities to recover the costs and control access to their infrastructure.

Because communications service providers benefit from pole attachments, they should share in the costs of maintaining the underlying - and critically important - utility infrastructure. Ironically, rates that deny full recovery of the costs associated with pole attachments systematically undermine investment in the very infrastructure that the telecommunications companies need. Additionally, these rates should also account for the safety, reliability and security of the infrastructure itself. As without this infrastructure and the electricity it delivers, telecommunications services will not function. Therefore, access rates should provide utilities greater control over the pole attachment process, including how 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 these rules, and thereby reducing disputes and accelerating the deployment of broadband throughout the country.

BACKGROUND

Since 1978, federal and state governments have enforced regulations impacting whether and how telecommunications companies can use utility poles to provide their services to consumers. These “pole attachment” regulations establish the rates, terms, and conditions for adding (“attaching”) telecommunications equipment to existing utility poles. Although utilities have always seen the benefits of using their infrastructure to provide other services, the FCC has adopted increasingly onerous rules that require utilities to allow pole attachment access at cost based rates. Most recently, the Commission has implemented rules that effectively create one rate for both cable television and telecommunications services even

though current law - Section 224 of the Communications Act - requires these rates to be separate. Utilities are currently challenging the latest FCC rates because they are contrary to the statute and public policy.

In addition, utilities must comply with FCC-mandated time lines for providing physical access to their poles - i.e. making the needed modifications so telecommunications equipment can be installed safely and without impacting electricity delivery. (The industry term for this is called "make ready," because utilities must make the pole ready to accommodate these attachments.)

If utilities do not meet these arbitrary deadlines, telecommunications companies can perform the work themselves, or hire a third party, without consideration of how these additions will impact the safe and reliable delivery of electricity.

Essentially, the FCC's decisions are having a twofold impact: 1) utility customers are subsidizing cable and telecommunications companies because these firms are not paying the true cost of connecting their equipment; and 2) utilities are often forced to accommodate telecommunications' firms demands rather than spend such resources on electricity safety and reliability.

The FCC claims these rules help expand broadband, when in fact evidence suggests that telecommunications providers are not deploying broadband services on a timely basis. Indeed, the FCC's own records demonstrate that broadband is not being deployed on a reasonable and timely basis, despite the continued reduction of pole attachment rates and the imposition of additional requirements.

Unfortunately, instead of revisiting its policies, the FCC is going even farther than it has in the past. In April 2017 the agency signaled its intention to propose new pole attachment rules.

Specifically, the FCC proposes the following:

- Shorter application processing times than the 45-day timeline that currently applies;
- Shorter make-ready timelines than are currently provided at various stages under the FCC rules;
- Various alternatives to the make ready process, including one-touch make-ready (OTMR), reduced rates;
- Regulated rates for Incumbent Local Exchange Carrier (ILECs) (instead of case-by-case review of ILEC rates through the complaint process); and
- A shot clock (180 days) for FCC review of pole attachment complaints

The FCC has not drawn any correlation as to how its proposed rules will expand broadband deployment. In fact, many UTC members are taking it upon themselves to bring broadband to their customers because the large telecommunications firms have yet to do so. For these reasons, UTC urges the FCC to develop long-term policy solutions that will truly bridge the digital divide.

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. UTC was founded in 1948, to advocate for the allocation of additional radio spectrum for power utilities. Since then, 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.

