

Pole Attachments Issue Brief

SUMMARY

Electric utilities empower broadband deployment and pole attachments are at the center of broadband and electricity. Often taken for granted and overlooked, utility pole attachments are vital for broadband deployment as utility poles support the underlying infrastructure that carries all kinds of communications services. All utilities provide pole attachments to third-party commercial communications service providers. In addition, some utilities use pole attachments to provide broadband service in areas of the country that are unserved and underserved by commercial communications service providers.

The Federal Communications Commission (FCC) regulates pole attachments. In theory, these regulations should ensure that attachments are made in conformity with electric utility safety and engineering standards and that the pole owners receive just compensation. In practice, though, the FCC's policies have unfairly favored the communications industry by imposing rates that deny utilities just compensation and expanding access requirements in ways that threaten the safety, reliability and security of critical infrastructure. Despite claims that these policies will promote broadband deployment, the FCC itself has determined that broadband is not being deployed on a reasonable and timely basis, and other studies as well as anecdotal experience have shown that lower pole-attachment rates have not promoted broadband deployment in unserved areas.

UTC POSITION

All utilities support and facilitate the deployment of wireless and wireline broadband services, either through providing communications companies with access to their poles or in many cases providing broadband services themselves in areas unserved or underserved by communications service providers.

The FCC states that its policies of reducing rates and expanding access for pole attachments are intended to remove barriers to broadband deployment. According to the agency, lower fees and expedited timelines for applications and make ready frees up increased investment for rural broadband.

Unfortunately, reality has proven otherwise. Despite continued FCC decisions to lower attachment fees, the Digital Divide in rural America exists, and in many cases, utilities are filling the gap by providing broadband in these areas. UTC believes that pole-attachment regulation should be balanced by allowing utilities to recover their costs and control access to their infrastructure.

Additionally, the rules for pole access should account for the safety, reliability and security of the infrastructure itself -- as without this infrastructure and the electricity it delivers, communications services will not function. Therefore, the rules for access should provide utilities greater control over pole-attachments, 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, thereby reducing disputes and accelerating the deployment of broadband throughout the country.

BACKGROUND

For most of the last century, pole attachments were owned or controlled by just two entities: the electric utility and the incumbent telephone company. The rates, terms and conditions for pole attachments were negotiated between utilities and telephone companies through joint-use agreements in general. As cable television companies emerged, they entered into pole attachment agreements of their own with utilities and telephone companies.

In 1978, Congress authorized the FCC or the states to regulate pole attachments to ensure that the rates for attachments by cable television operators were just and reasonable. At that time, Congress exempted public power and cooperative utilities from federal pole attachment jurisdiction. Subsequently in 1996, Congress expanded pole attachment in two significant ways: 1) by requiring utilities to provide non-discriminatory access to pole attachments and 2) by regulating the rates, terms and conditions of pole attachments by telecommunications carriers, as well as by cable television operators. Congress specifically excluded the big incumbent telephone companies from the newly created class of telecommunications carriers entitled to regulated access and rates for pole attachments.

Ever since Congress authorized pole attachment regulations, the FCC has expanded its jurisdiction, reducing rates and imposing additional access requirements. Most recently, the FCC has imposed shorter timeframes under which utilities process applications and conduct make ready (to rearrange attachments to create additional space and/or reinforce the pole to be able to accommodate additional attachments).

In addition, the FCC has established a presumption in favor of providing the big incumbent telecommunications carriers with the same regulated rate for pole attachments that applies to attachments by cable television operators, competitive telecommunications carriers and other competitive broadband service providers.

Utilities may only overcome this presumption by producing clear and convincing evidence that the big incumbent telecommunications carriers should pay more for pole attachments. These new rules threaten to unilaterally revise the mutually negotiated terms and conditions of joint use agreements that have provided the basis for cost-sharing between utilities and telephone companies as pole owners for decades. Finally, the FCC has established rules that effectively expand pole regulations to apply to the rates, terms and conditions for access by wireless communications providers to infrastructure (including utility poles) that is owned or controlled by

government entities.

Despite the FCC's claims that lower attachment rates will promote investment in rural broadband, the communications industry is not investing these savings into rural broadband expansion. In fact, evidence suggests that lower pole-attachment rates have no bearing on rural broadband. Indeed, the Virginia State Corporation Commission in a 2011 report found no conclusive evidence linking lower pole fees to increased broadband deployment.

Additionally, the communications industry has advocated that the only way to bridge the rural Digital Divide is through federal subsidies. Finally, 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.

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.

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