

Pole Attachments Issue Brief

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SUMMARY

Electric utilities empower broadband deployment, and pole-attachment policies are at the center of broadband and electricity. Often taken for granted and overlooked, utility poles are vital for broadband deployment as they support the underlying infrastructure that carries communications services. All utilities provide so-called “pole-attachment” services to third-party commercial communications service providers. In doing so, utilities have become key partners in the deployment of broadband throughout the U.S., and in many instances are providing broadband services to their communities.

For the most part, the Federal Communications Commission (FCC) regulates pole attachments, although many states have retained this authority. In theory, the FCC regulations should ensure that attachments are made in conformity with electric utility safety and engineering standards and that the pole owners receive just compensation for their service. In practice, though, the FCC’s policies have unfairly favored the communications industry by imposing artificially low rates and expanding access requirements in ways that threaten the safety, reliability and security of utility critical infrastructure. Despite claims that these policies will promote broadband deployment, state governmental entities have challenged the premise that pole attachments are a barrier to rural broadband.

UTC POSITION

All utilities support and facilitate the deployment of 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 claims that its policies of expediting pole-attachments review processes and lowering the rates for attaching

will remove barriers to broadband deployment. According to the agency, lower fees and expedited timelines for the processing of pole-attachment applications frees up increased investment for rural broadband.

Unfortunately, reality has proven otherwise. Despite continued policies lowering attachment fees, the Digital Divide in America still 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 and ensuring the reliability of utility infrastructure

BACKGROUND

For most of the last century, utility poles 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.

This changed in the late 1970s, when Congress authorized the FCC or the states to regulate pole

attachments to ensure rates were considered just and reasonable for companies providing services like cable. Congress specifically exempted public-power and cooperative utilities from these requirements. Congress expanded on these rules in the late 1990s, and ever since the FCC has expanded its jurisdiction, reducing rates and imposing additional access requirements.

Most recently, the FCC issued two significant decisions on pole attachments in 2018: An order in August imposing new pole access requirements on wireline attachments—i.e., attachments designed to provide broadband services to buildings; and a September order reducing the time entities can review attachment applications and the fees they can charge for attaching small cellular devices. The FCC claims that both orders will ease the process and costs for telecommunications companies to attach their equipment to infrastructure they do not own.

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. Both of these orders are being challenged by a host of different entities, ranging from electric utilities to big cities and small municipalities who argue the FCC is overstepping its jurisdiction. Additionally, these entities raise public safety concerns, as the tight timelines and capped fees envisioned in these orders prevent utilities and others from doing a full and complete analysis into how the new attachments could impact the integrity of the infrastructure on which they are being attached.

In addition to concerns over public safety, evidence exists suggesting that lower pole-attachment rates have no impact on the deployment of broadband into unserved and underserved areas, despite the FCC's contention to the contrary. 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.

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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