



National Rural Electric
Cooperative Association
A Touchstone Energy® Cooperative

FAST FACTS

Maintain Cooperatives' Exemption from FCC Pole Attachment Oversight

Issue. Congress should maintain the cooperative exemption from the federal pole attachment statute and reject any effort to subject electric cooperatives to federal pole attachment regulations.

Background. In 1978, Congress acted to speed deployment of cable television service. Among other initiatives, Congress provided for federal regulation of pole attachments. The FCC was granted jurisdiction over rates, terms and conditions for cable lines attached to investor-owned utilities' poles unless a state chose to regulate pole attachments. Recognizing the unique, locally-directed governance of electric cooperatives, Congress exempted electric cooperatives from the pole attachment provisions and maintained that exemption in the 1996 reauthorization of the Telecommunications Act.

In the 1978 statute and the 1996 Act, Congress specifically allowed state pre-emption of federal regulation where states certify to the FCC that they regulate rates, terms and conditions for pole attachments. Eighteen states and the District of Columbia have exercised this right to regulate pole attachments and some of these states oversee electric cooperatives' pole attachments.

During debates on the 1978 Pole Attachment statute, Congress clearly expressed an interest in preserving a balance of state vs. federal authority, stating, "The Committee considers the matter of CATV pole attachments to be essentially local in nature, and that the various state and local regulatory bodies which regulate other practices of telephone and electric utilities are better equipped to regulate CATV pole attachments.... It is only because such state or local regulation currently does not widely exist that federal supplemental regulation is justified."

Congress recognized the cooperative difference when it stated that "cooperatively owned utilities, by and large, are located in rural areas where often over-the-air television service is poor. Thus customers of these utilities have an added incentive to foster the growth of cable television in their areas ... pole rates charged by municipally owned and cooperative utilities are already subject to a decision-making process based on constituent needs and interest." Today's electric cooperatives are similarly motivated by their consumers' desire for robust broadband and other advanced telecommunications services.

In order to maintain 501(c)(12) cooperative tax-exempt status, cooperatives charge cost-based rates for their services, including pole attachments. Often, cooperatives charge rates that do not fully recover all of their costs, especially considering that pole attachments may cause operational and/or safety problems. If a federal uniform rate pushed attachment rates lower than actual costs, electric co-op consumers would wind up subsidizing cable, broadband and telecommunications corporations.

Electric cooperative boards are responsible for maintaining the integrity of the cooperatives' distribution lines and poles. Local regulation of pole attachments ensures that cooperative boards and management can facilitate the deployment of cable, telecommunications and broadband services while protecting the critical infrastructure that brings essential power to homes and businesses.

Cable providers continually claim that reducing their pole attachment rates in less-dense population areas will help speed broadband deployment. But, nothing in an artificially low pole attachment rate guarantees that service providers will: (1) deploy broadband service to unserved or underserved areas or, if they do serve these areas, (2) pass through these savings to consumers.

Electric cooperatives have an additional incentive to support the expansion of broadband and other advanced telecommunications capability in their communities with reasonable pole attachment rates and access procedures. Many cooperatives will require upgraded communications networks to support smart grid technologies that enhance the efficiency and reliability of electric service.

The Administration's 2010 National Broadband Plan (NBP) called for "rental rates for pole attachments that are as low and close to uniform as possible ... to promote broadband deployment." It also recommended that the FCC "implement rules that will lower the cost of the pole attachment make-ready process." However, the NBP pole attachment recommendations relied too heavily on information provided by cable, telecommunications and broadband interests and neglected to address the costs and operational concerns these attachments create for utilities. In 2011, the FCC amended several elements of its pole attachment rules. While these rules do not apply to electric cooperatives, they are often cited by attachers as a basis for negotiations. Further, state PUCs and PSCs often look to the FCC for guidance in setting state specific pole attachment rates, terms and conditions. The 2011 Order further lowered the federal pole attachment rate and increased the time period during which attachers could collect penalties if complaints are successful.

NRECA position. We urge Congress to maintain the federal pole attachment exemption for electric cooperatives.

For more information:

Tammy Kelch Embrey, NRECA

703-907-5879

tammy.embrey@nreca.coop

<http://www.nreca.coop>



November 7, 2014