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Preserving the Municipal Exemption from Pole Attachments

Public power utilities, including Missouri River Energy Services (MRES) members, want to bring the best technology and services to their communities. Federal overreach into safeguarding local utility poles would undermine local decision-making, increase costs for municipal customers, and do little to advance broadband deployment.

Background

Broadband deployment is critical towards bridging the digital divide, and municipalities are part of that solution. Many MRES communities are actively engaged with broadband providers to facilitate deployment to meet the needs of their communities and foster economic development, particularly in rural and underserved communities. However, MRES and its municipal utility members also have an obligation to ensure any telecommunication equipment is installed safely and located in appropriate locations. Additionally, municipalities work to ensure their pole attachment rates and agreements do not discriminate against other broadband providers and ensure that the community does not subsidize broadband providers and users. As a result of local government's cooperative efforts, broadband deployment is blossoming.

Pole attachments occur when broadband or telecommunications providers install their equipment on electric utility poles, reducing infrastructure duplication and costs for all users. Since 1978, municipal owned utilities and rural electric cooperatives have been explicitly exempted from federal pole attachment regulation under Section 224 of the Communications Act, allowing for local regulation and cooperation to optimize infrastructure use while maintaining electric reliability and utility/pole safety.

Congress reaffirmed this exemption through multiple updates to telecommunications law, recognizing that local governing boards already focus on setting fair, transparent rates and terms that reflect community needs. MRES' member communities work closely with broadband providers to support deployment. Municipal electric utilities' exercise of local control over pole attachments is not a barrier to broadband access. Rather, municipal utilities partner in broadband expansion through joint ventures, leasing fiber, or providing broadband directly.

Regulatory Action

Since 2010, the FCC has repeatedly recommended that Congress eliminate the longstanding exemption that municipal electric utilities and rural electric cooperatives have from FCC pole attachment regulation, claiming it would facilitate broadband deployment. Despite being barred from regulating municipal and cooperative utility poles under Section 224 of the Communications Act, the FCC has pursued this authority through multiple rulemakings and orders since 2016. In 2017 and 2018, the FCC issued several orders that excluded capital costs from pole attachment rates, imposed "shot clocks" on utilities' response times to attachment complaints, and exempted certain pole replacements from historic preservation rules. In its 2018 Small Cell Declaratory Ruling and Third Report and Order, the FCC went further—preempting state and local laws, including those governing small cell wireless attachments on public power poles, to remove what it called "regulatory barriers" to deployment. In 2023, the FCC adopted a Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking creating a "Rapid Broadband Assessment Team" to expedite broadband-related disputes, requiring utilities to share pole data with extraneous attachments, expanding rules on pole replacement cost allocation, and seeking further comment on make-ready timelines and "self-help" provisions. The FCC

finalized this 2023 rule in July 2024, establishing new information collection requirements for pole attachment regulation over the next three years.

Problematic Legislative Efforts

In 2021, there were unsuccessful attempts to include provisions in the Infrastructure Investment and Jobs Act (P.L. 117-58) that would have weakened public power utilities' long-standing exemption from federal pole attachment regulations by expanding Section 253 to let broadband developers challenge public power pole attachment rates, timelines, or legitimate denials under the misleading pretext of "eliminating barriers to broadband deployment." More recently, in January 2025, Representative Morgan Griffith (R-VA) introduced H.R. 278, the Barriers and Regulatory Obstacles Avoids Deployment of Broadband Access and Needs Deregulatory Leadership (BROADBAND Leadership) Act, which MRES strongly opposes because it would effectively strip public power utilities of their exemption from FCC oversight of pole attachments.

The legislative text of H.R. 278 was included in H.R. 2289, which passed the House Energy and Commerce Committee in December. This language would start a "shot clock" upon a request to a city for pole attachment approval. However, municipal electric utilities and city administrations are rarely one-in-the-same. This sets up a scenario in which a municipal electric utility—even if it finally receives notice of the attachment request—will not have sufficient time to fully evaluate safety and other risks that the proposed pole attachment may present towards the electric infrastructure and providing reliable power.

MRES urges Congress to preserve the municipal exemption from FCC pole attachment regulation – or provide full respect for local decision-making for those cities that are acting to provide nondiscriminatory access.