

Maintaining the Municipal Exemption for Pole Attachments

1 From time to time, the Federal Communications Commission (FCC or Commission) has expressed its
2 desire for Congress to eliminate the longstanding exemption for municipal and coop-owned facilities
3 from compliance with federal pole attachment requirements. In early 2010, the Commission released the
4 National Broadband Plan (NBP), which recommended, among other things, that Congress “consider
5 amending Section 224 of the Act to establish a harmonized access policy for all poles, ducts, conduits,
6 and rights-of-way.” The NBP identified “poles owned by cooperatives, municipalities, and non-utilities”
7 and other poles not subject to FCC jurisdiction as impediments to establishing national broadband
8 infrastructure policy. In 2017, the FCC again indicated its desire for Congress to eliminate the exemption
9 in a white paper produced by the Commission’s Office of Strategic Planning and Policy Analysis entitled,
10 “Improving the Nation’s Digital Infrastructure” (White Paper). The White Paper, which has since been
11 officially withdrawn, asserted that “improving the nation’s digital infrastructure should be a significant
12 part of any national-infrastructure plan...” It declared that “the primary goal of federal actions with
13 respect to digital infrastructure should be to increase and accelerate profitable, incremental, private-sector
14 investment to achieve at least 98% nationwide deployment of future-proofed, fixed broadband networks.”
15 The White Paper recommended “reducing local pre-deployment barriers to reduce deployment costs and
16 delays,” including pole attachment rates, and “remov[ing] the exemption for municipal and coop-owned
17 facilities” in Section 224 of the Communications Act.

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19 The Commission has never provided any evidence that this exemption is an impediment to broadband
20 deployment. The NBP cited no specific cases where the exemption proved to be problematic and
21 provided no rationale for removing the exemption. The White Paper only highlighted the fact that the
22 poles, ducts, conduits, and rights-of-way of investor-owned utilities are subject to FCC jurisdiction. The
23 sole justification for removal of the municipal exemption is to have a “uniform policy for broadband
24 access to privately owned infrastructure.” Yet neither the NBP nor the White Paper addresses why
25 Congress chose to exempt municipal and cooperative poles from federal regulation. Specifically, in 1978,
26 and again in 1996, Congress correctly included the exemption because the rates charged by public power
27 and cooperative utilities were “already subject to a decision-making process based upon constituent needs
28 and interests.” Nothing about this conclusion with respect to public power has changed since the
29 Commission made those determinations. Namely, public power utilities are owned by their customers
30 and recognize the importance of broadband infrastructure—wireline and wireless—to their communities.
31 They seek to promote broadband deployment, not prevent it.

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33 This spring, the FCC opened two rulemaking dockets, intended to “reduce regulatory impediments” to
34 wireline and wireless broadband infrastructure deployment. The wireline rulemaking seeks to revise pole
35 attachment regulations on FCC-regulated utility pole attachments by lowering pole attachment fees and
36 streamlining the make ready process. The wireless rulemaking seeks to streamline state and local review
37 of wireless facility deployment applications. Of concern to public power is the call for comments on
38 whether the FCC should use its Section 253 authority as means to regulate “municipal” utility poles in
39 clear contravention of Section 224, which exempts such poles from FCC regulation.

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41 Should Congress seek to act on the FCC’s recommendations in either an infrastructure bill or
42 communications-focused legislation, it should preserve the municipal-cooperative exemption because it is
43 still good public policy. Public power utilities determine pole attachment fees with the best interests of
44 their customers in mind. They charge just and reasonable, cost-based, negotiated, or applicable formulaic
45 rates to all attachers, and, similarly, pay fair rates for their attachments on communications companies’
46 poles. As pole owners, they also ensure that the rates they charge allow them to fulfill their responsibility
47 to ensure safety and reliability. Furthermore, the governing structures of public power utilities provide
48 for a local review and remedy process for any aggrieved party.

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50 **NOW, THEREFORE, LET IT BE RESOLVED:** That the American Public Power Association (APPA)
51 urges Congress to preserve established federal law regarding public power utilities’ local control over
52 pole attachments. Congress should not eliminate the municipal exemption to Federal Communications
53 Commission (FCC) rules and regulations regarding pole attachments; and

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55 **BE IT FURTHER RESOLVED:** That APPA urges Congress, if it introduces legislation addressing
56 wireless pole attachments, to carefully balance the need for widespread wireless deployment with the
57 unique safety, reliability, and cost considerations inherent in installing wireless infrastructure to utility
58 poles.

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60 **BE IT FURTHER RESOLVED:** That APPA urges the FCC, in any future action, to reject suggestions
61 that it should regulate public power utility poles under any other section of the Communications Act,
62 which would be in plain contravention of federal law.