

Sponsors: Conway Corp; Missouri Association of Municipal Utilities; Blue Ridge Power Agency; Orlando Utilities Commission; Delaware Municipal Electric Corporation; Missouri Joint Municipal Electric Utility Commission; New York Association of Public Power

In Support of Broadband Deployment and Local Control of Pole Attachments

1 Over the last decade, the communications industry has pushed a false narrative that public power utilities
2 are an impediment to broadband deployment and has sought to have Congress repeal section 224 of the
3 Communications Act, which precludes the Federal Communications Commission (FCC or Commission)
4 from regulating attachments to public power utility poles. The industry initially asserted that Congress
5 should have a uniform national policy for wireline pole attachments rather than allowing local control and
6 system oversight, which is laid out in the Telecommunications Act of 1996. It then claimed public power
7 was an impediment to the deployment of broadband in rural areas. This was another unfounded assertion
8 given the industry repeatedly acknowledged to investors that it would not deploy service to such areas
9 because there would be too few subscribers to justify the cost of building broadband infrastructure. More
10 recently, the wireless industry is claiming that public power is an impediment to the rollout of 5G
11 wireless broadband service, yet in many public power communities, the industry has not sought to deploy
12 service.

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14 Over the years, the communications industry has asked Congress to repeal section 224 of the
15 Communications Act and give the FCC jurisdiction over attachments to public power utilities. It has also
16 lobbied the Commission to request that Congress repeal the exemption. In 2016, the communications
17 industry sought to use other provisions in the Communications Act to circumvent the exemption in
18 section 224. It petitioned the Commission for a declaratory ruling that local government right-of-way
19 regulations and zoning requirements impede the ability of wireless carriers to deploy small cell wireless
20 facilities in a timely manner. In 2018, the FCC issued a report and order that preempted state and local
21 laws and agreements, including those related to pole attachments, to “remove regulatory barriers that
22 would unlawfully inhibit the deployment of infrastructure necessary to support these new [broadband]
23 services.” This action was taken even though no empirical evidence was provided in the docket that
24 showed that public power utilities were a barrier to broadband deployment because of their pole
25 attachment rates or make-ready requirements.

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27 At the same time, the industry pushed for the introduction of legislation to circumvent section 224. In
28 2017, the STREAMLINE Small Cell Development Act was introduced in the Senate. The bill sought to
29 revise sections 253 (related to barriers to entry) and 332 (related to mobile services) to clarify that those
30 sections should apply to utility pole attachments. If enacted, this approach would have essentially gutted
31 the public power exemption in section 224 and subjected public power pole attachments to the FCC’s

32 “one-size-fits-all” regulations of rates and make ready provisions in the name of facilitating the roll out of
33 5G wireless services.

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35 In October 2020, the U.S. Court of Appeals for the Ninth Circuit upheld the FCC’s 2018 report and order.
36 The court stated the Commission could use section 253 to prevent local governments from creating
37 barriers to wireless small cell deployment, including with respect to access to public power utility poles,
38 but clarified that it could not use it to regulate the specific rates, terms, or conditions of public power pole
39 attachments. While public power is very disappointed that the court ruled that section 253 can apply to
40 pole attachments, public power is pleased the court made clear that the Commission cannot use it to
41 regulate pole attachments. However, we expect the industry to continue to attack public power utilities
42 and push its false narrative on Capitol Hill and before the FCC.

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44 Public power utilities are community owned and work on behalf of their customers. They are very
45 supportive of efforts to deploy broadband services (wireline and wireless) and regularly work with the
46 industry to facilitate attachments to poles. This is why Congress excluded their poles from FCC
47 regulation in 1978 and again in 1996. The communications industry’s push to have public power poles
48 subject to FCC regulation is a guise for shifting its broadband deployment costs onto electric customers.
49 Public power utilities will oppose any efforts in Congress or at the FCC to make their customers subsidize
50 for-profit communications companies.

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52 **NOW, THEREFORE, BE IT RESOLVED:** That the American Public Power Association (APPA)
53 strongly supports the goal of providing every American with access to affordable broadband services; and

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55 **BE IT FURTHER RESOLVED:** That APPA continues to oppose any actions by the Federal
56 Communications Commission (FCC or Commission) that eliminate local control and system oversight
57 over public power pole attachments in contradiction of the language in section 224 of the
58 Communications Act precluding the Commission from doing so; and

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60 **BE IT FURTHER RESOLVED:** That APPA urges Congress to preserve long established federal law
61 regarding public power utilities’ local control and system oversight over pole attachments. Congress
62 should not eliminate the municipal exemption in section 224 of the Communications Act.

Adopted at the Legislative & Resolutions Committee meeting

March 2, 2021

Sunsets in March 2029