

# Fast Facts

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February 2018

## Maintain Cooperatives' Exemption from FCC Pole Attachment Regulation

**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:** Electric Cooperative poles are designed and constructed for a specific purpose – to carry electrical wires and related equipment. Because working on or near energized electrical lines and equipment is inherently hazardous, safety codes and regulations govern the way overhead lines and poles are designed, constructed, installed, and maintained in order to protect utility workers and the general public. These same safety rules specify the placement of other equipment on poles such as telecommunications or cable equipment. This is because any foreign attachment departs from the design and construction of the original overhead line and may introduce significant engineering and safety issues which must be considered. This includes reliability issues because the attachments increase wind and ice loading, increasing the susceptibility to breakdowns during extreme weather events. In some cases, the addition of foreign attachments may necessitate installation of taller or stronger poles or call for relocation of poles, increasing costs to the electric cooperative members.

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. Twenty 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 Cable TV (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." Today, large telecommunications and broadband providers continue to push Congress to authorize a Federal one-size fits all regulation plan for pole attachments by making the argument that inconsistent pole attachment policy is a barrier to broadband deployment.

In 1978, 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. Some costs are difficult to identify and quantify, especially operational or safety issues that improper pole attachments may cause. If a federal uniform rate pushed attachment rates lower than actual costs, member owners of the not-for profit electric co-op would wind up subsidizing cable, broadband and telecommunications corporations, many of which are for-profit entities.

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.

Electric cooperatives have an additional incentive today to support the expansion of broadband and other advanced telecommunications capabilities in their communities with reasonable pole attachment rates and access procedures. Cooperatives require increasingly robust communications networks to support smart grid technologies that enhance the efficiency and reliability of electric service. In addition, electric cooperatives recognize the need that their consumer owners have for access to broadband in their service territories.

**NRECA position:** We urge Congress to maintain the federal pole attachment exemption for electric cooperatives and reject all attempts to subject electric cooperatives to federal regulation of pole attachments.

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