



Jim Matheson
Chief Executive Officer

April 27, 2018

Ms. Elizabeth Bowles, Chair
Broadband Deployment Advisory Committee
Federal Communications Commission

RE: Accelerating Broadband Deployment, Broadband Deployment Advisory Committee (BDAC), GN Docket 17-83; Draft Model State Code

Dear Chairwoman Bowles,

The widening digital divide is a national crisis deserving of a national response. Unfortunately, the BDAC risks missing opportunities to have a fruitful conversation about ways to expand broadband access in rural America. Only a small portion of the overall model state code directly addresses improving rural broadband access and NRECA supports those sections.


At the April 25 in-person Broadband Deployment Advisory Committee (BDAC) meeting, the committee decided “to vote out the model state code subject to the comments made at this meeting, and that will be submitted in the next two days, to resolve during harmonization with the other recommendations of the BDAC.” I recognize the desire to move quickly on these important issues. But the model code should have been given a full hearing before the BDAC prior to a vote. Since there was not time for members to raise or address concerns at that meeting, NRECA submits its concerns with proposed edits to the draft model state code.

Our understanding from the discussion at the end of the in-person meeting is that all concerns, issues and proposed edits raised at the meeting and submitted by the April 27th deadline will be fully considered by the reconciliation committee. It is our sincere hope that the reconciliation committee and full BDAC will give serious consideration to our members’ concerns. NRECA urges the committee to pay particular attention to the precedent set by 18 states that have adopted statutes in recent years streamlining the siting of small cell and 5G wireless devices. Each of those states has excluded electric cooperatives from application of the law and many have excluded electric utilities more broadly.

Collectively, electric utilities own sixty-five to seventy percent of all poles nationally and our infrastructure plays a vital role in the deployment of broadband. The final model codes adopted by the BDAC could have a profound impact on the electric industry. As such, it is imperative that the BDAC adopt a balanced and consensus driven model state code.

If members of the BDAC or reconciliation committee have any questions regarding our concerns or proposed edits please have them contact Brian O'Hara, Senior Director Regulatory Issues at 703-907-5798, or brian.ohara@nreca.coop.

Sincerely,



Jim Matheson
CEO, NRECA

CC. Members of the BDAC

Appendix A: NRECA Proposed Edits to the State Model Code:

Overarching issue: NRECA has major concerns with a few definitions in Article 2 which impact our vote on other articles in the draft code. The main concern is that the draft code, if adopted as written, would specifically recommend that states enact laws to bring electric coops under state pole attachment regulation. Congress recognized the unique structure and local control inherent in the cooperative business model and exempted them from federal pole attachment regulation. Of the eighteen (18) States to date that have enacted legislation to streamline small cell/5G siting NRECA has confirmed that EVERY ONE of them did NOT apply to electric cooperatives.¹ In fact, the clear majority have not applied to ANY electric utility infrastructure. The model code is therefore contrary to the letter and spirit of the federal rules and all the states adopting laws to date. Where possible our proposed edits were drawn directly from the text of existing state statutes. NRECA provides specific edits to the draft model code below. Text to be removed is in ~~double strike through~~ and proposed new text is in red.

Article 2 – Definitions:

The main concerns of NRECA are the definitions of “Authority” and “Owner” since they both directly relate to the applicability of the model code to electric cooperatives. The definition of “Authority” in the municipal model code is different than in the state code. We propose edits to the definition from the state model code and recommend that our revised definition be used for both codes. The clarifying language we recommend to Authority comes directly from the Iowa state small cell statute. On the definition of “Owner”, the draft municipal code does not contain a definition of owner. To harmonize the two model codes, we recommend that the definition of “Owner” be stricken from the state model code. If the reconciliation committee decides to keep the definition of “Owner” then we propose the below clarifying language that was taken directly from the Texas state small cell statute. The Texas statute is a broad exception and NRECA is willing to work with the BDAC on minor tweaks.

“**Authority**” means a State, county, municipality, district, local authority or other subdivision thereof, ~~or similar entity~~ authorized by applicable Law to make legislative, quasi-judicial, or administrative decisions, including concerning an Application, but shall not include State courts having jurisdiction over an Authority, **or any entities that do not have zoning or permitting authority jurisdiction.** (From Iowa statute)

“**Owner**” means a Person owning or operating a Utility Pole or similar structure in the Public Right-of-Way on which Facilities for the distribution of electricity or communications are or may be located, **except that it does not include investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunications providers.** (From Texas law)

¹ States that have adopted small cell/5G legislation to date. All have excluded electric cooperatives. List: Arizona, Colorado, Delaware, Florida, Iowa, Illinois, Indiana, Kansas, Minnesota, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Texas, Utah, Virginia.

Article 5 – Special Provisions for Rights of Access to Poles in the Communications Space:

Section 1.1.3. would improperly grant any entity installing or maintaining small cell Antennas access to the electric space and, even more dangerously, grant them the ability to move electric facilities. Creating unsupervised dangerous conditions is not the intent of drafters so we propose language to bring the text in line with intent. This provision should be revised to read:

1.1.3 Nothing in this Article authorizes an Attacher to perform any act with respect to Attachments located above the ‘Communication Worker Safety Zone’, as such term is defined in the then-current National Electrical Safety Code, or any electric supply facilities wherever located. **Notwithstanding the foregoing, an pole owner in its discretion may establish conditions to allow such acts to be performed if** ~~unless~~ such Attachments are for small cell Antennas and have been approved by the pole owner.”

Article 10 – State Franchise Agreements:

Section 2.2 requires the state franchise to establish rules relating to access to “public rights of way and infrastructure.” This should be clarified to state “public rights of way and public infrastructure” to avoid any interpretation that cooperative or other private infrastructure is subject to state franchise control.

2.2 The (designated State agency) shall establish the necessary rules and regulations to implement this provision. Such rules and regulations shall include, but not be limited to, appropriate and reasonable filing fees, requirements for corporate financial capabilities, designation of corporate officials and contact information, designation of service territory, reasonable rules or regulations relating to access to public rights of way and **public** infrastructure and to placement or maintenance of Communications Network Facilities used to deploy the Communications Service authorized by the franchise, and the franchise fee. Such rules and regulations shall also be subject to the requirements and limitations on franchise requirements and fees established in 47 U.S.C. §§ 541 et seq., to the extent such statutory provisions are applicable to the type of Communications Service for which the franchise is being granted, including the prohibition on fees greater than 5 percent of Cable revenues for any Communications Provider that offers Cable service.

Article 13 – State Broadband Infrastructure Manager:

NRECA supports the creation of such entities at the state level to promote broadband deployment. 2.3.1 would create a broadband infrastructure advisory council. The council would be improved with inclusion of representation of the electric utility sector which owns 65 to 70% of all poles across the country. As the owner of most poles, electric utilities are valuable partners in advancing broadband deployment and should have a seat on such a council.

2.3.2. The Council shall have a total membership of fourteen members that may consist of two legislative members, five non-legislative citizen members, five industry professionals

representing each of the cable, fiber, fixed line, satellite and wireless telecommunications industries (“Industry Professionals”) and two ex officio members. Members shall be appointed as follows:

- (1) the Speaker of the House or his/her delegate;
- (2) the President Pro Tempore of the Senate or his/her delegate;
- (3) four citizen representatives to be appointed by the Governor, provided that at least one representative must come from agriculture, or other organization that represents Rural areas of the State, **at least one representative of electric utilities**; and
- (4) one citizen representative as selected by the [State] Municipal League;
- (5) five Industry Professionals to be appointed by the Governor in conjunction with the Manager

The State may, in the alternative, choose to structure this body as an advisory council consisting of private sector broadband providers, federal, State and local government officials involved in broadband issues and relevant nonprofits and businesses.

New Article 14 – Applicability of the State Model Code:

NRECA recommends inclusion of a new Article 14 that would offer state legislatures a modular option to limit the applicability of their statute enacted pursuant to the state model code. Such an option is in keeping with the modular format of the model code. We provide two examples of specific language from statutes enacted in Texas and New Mexico that could be used almost verbatim in a new Article 14.

Option 1: EFFECT ON INVESTOR-OWNED ELECTRIC UTILITIES, ELECTRIC COOPERATIVES, TELEPHONE COOPERATIVES, AND TELECOMMUNICATIONS PROVIDERS. Nothing in this ~~chapter~~ **Act** shall govern attachments of ~~network nodes~~ on poles and other structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunications providers. This chapter does not confer on municipalities any new authority over those utilities, cooperatives, or providers. (*From Texas statute*)

Option 2: APPLICABILITY. --The xxxx Act does not affect the authority, under state or federal law, of an investor-owned electric utility or electric cooperative that owns, controls or operates utility poles or wireless support structures to deny, limit, restrict or determine the rates, fees, terms and conditions for the use of, or attachment to, those poles or structures by a wireless provider; (*From New Mexico statute*)