



## Preserving Local Control Over Pole Attachments

---

### Municipalities Have Long Set Pole Attachments Terms and Rates

Current federal law requires the Federal Communications Commission (FCC) to regulate the rates, terms, and conditions for pole attachments by telecommunication systems. FCC jurisdiction of pole attachments **does not apply** to municipal utilities. However, there are proposals to change that jurisdictional relationship—including the preemption of local and state laws governing pole attachments.

When Congress passed the Pole Attachment Act of 1978, municipal electric utilities remained exempt from FCC rate authority. The reason for the exemption was because the pole attachment rates charged by municipally owned utilities were already subject to a decision-making process based on citizen needs and interests. The rates, terms, and conditions set by these locally-regulated entities are subject to being challenged at the local government level. All such challenges have the benefit of being subject to the transparency of open meetings laws and would involve the local citizenry. Despite other changes and amendments to federal law, this exemption has remained intact for almost 40 years—a recognition of the benefits of local governance.

### Municipalities Have a Duty to Oversee Proper Use of Poles

Local governments are required to provide for the needs of the community by controlling what is added to its utility poles and ensuring that one set of customers do not subsidize another. Expanding FCC authority over municipalities would undermine the robust local government permitting process that allows for citizens to discuss the impacts of the equipment, review any encroachments, examine safety risks, determine if the project would hinder any future upgrades to the existing distribution system, and assess the proper cost allocation for pole attachments and maintenance. Also, citizens concerned with their neighborhood's aesthetics may want limits on deployment—but would lose this right should FCC authority be expanded to impose a one-size fits all approach on municipalities.

Under the existing framework, third parties must execute an agreement with cities, and resolve potential issues in advance. For example, if a city allows small wireless cells on electric distribution lines, the city and the telecom provider can agree ahead of time on the relocation and reinstallation of the wireless cells if the city chooses in future years to bury the distribution lines, or negotiate the removal of defunct attachments that often remain on the poles well beyond their useful life. The city can also collaborate with the telecom provider on infrastructure, aesthetics, pole design, and safety issues.

**Municipalities  
Are Not  
Creating  
Barriers to  
Broadband  
Deployment**

The demand for broadband deployment continues to grow throughout the nation. According to a June 2017 Market Status Report of the Small Cell Forum, new deployments of small cell facilities in North America were 56,000 in 2014, 69,000 in 2015, and 206,000 in 2016. Municipalities have much to gain with these deployments, particularly in rural and underserved areas. Local communities, however, want the equipment installed safely and located in appropriate locations, and pole attachment rates set to recover direct and indirect costs.

**Proposed  
Legislation  
Would Impose  
a One-Size-  
Fits-All  
Approach on  
Municipalities**

Local decision-making is at risk with the various broadband proposals being considered in Congress. Draft legislation under consideration by the Senate Commerce Committee would place municipalities under FCC control, impose a short timeline for municipal consideration of broadband pole attachment requests, and create a rebuttable presumption that the application should be approved. Small municipalities lack the resources to engage effectively in this short-circuited process and to take the steps necessary to ensure system safety and community priorities.

Any effort to advance broadband deployment must respect the ability of local communities to:

- Set rates for pole attachments;
- Establish standards to ensure safety and compliance with community standards;
- Ensure broadband providers cover the full cost of pole attachments, including maintenance and any cost to remove equipment in the future; and,
- Respect and retain local control