Restoring Local Control Over Pole Attachments

Recognizing the importance of local decision-making, federal law has consistently and repeatedly exempted attachments of telecommunications equipment to municipally owned poles from the jurisdiction of the Federal Communications Commission (FCC). This successful arrangement has simultaneously promoted the effective and timely deployment of new technologies and advanced community needs and interests. A recent Order issued by the FCC overturns this long-held policy. The Order usurps local control, preempts existing agreements, threatens community safety, forces subsidization of broadband providers, and countermands congressional directive. Legislation has been introduced in Congress to vacate the FCC Order.

FCC Order Imposes a One-Size-Fits-All Approach

The FCC Order ignores existing law and overturns decades of responsible local decision-making. Under the Order:

- All local governments must act on pole attachment requests under a rigid and uniform timeline, providing insufficient time for community engagement, full engineering analysis, and fair negotiations;
- A uniform and arbitrary pole attachment fee is imposed on all local communities, in many cases forcing communities and their citizens to subsidize broadband providers;
- Consideration of aesthetic, structural and safety concerns are drastically limited; and,
- Existing pole attachment agreements and state laws are preempted.

The FCC Order places profits of broadband providers over safety and cost equity. It is essential that the use of this public resource properly weigh safety, fairness, and all community priorities. A variety of local government organizations have challenged the FCC Order, with appeals from five appellate courts now consolidated in the 9th Circuit.

Given the time required for legal challenges to be resolved, and absent congressional action, the FCC Order will have an immediate and potentially dramatic effect: existing agreements could be voided, and local governments will be forced to provide for pole attachments that could short-change communities, threaten system reliability, poses risks to workers and residents, and run counter to local priorities.

Municipalities Have Long Set Pole Attachments Terms and Rates

Current federal law requires the 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.

When Congress passed the Pole Attachment Act of 1978, municipal electric utilities remained exempt from FCC rate authority. This exemption was included because attachments on municipally owned poles were already subject to a public decision-making process based on citizen needs and interests. The rates, terms, and conditions set by these locally-regulated entities are subject to challenges at the local government level. Local control also allows

public power communities to address their individualized safety and aesthetic concerns and ensures the structural integrity of local infrastructure. Despite other changes and amendments to federal law, this exemption has remained intact for 40 years—a recognition of the benefits of local governance.

Municipalities Have a Duty to Oversee Proper Use of Poles

Local governments provide for the needs and safety of the community by controlling what is added to utility poles and ensuring that one set of customers does not subsidize another. Expanding FCC authority over municipalities would undermine the robust local government permitting process that enables citizens to discuss the impacts of the added equipment, review any encroachments, examine safety risks, determine if the project would hinder future upgrades or modifications to the existing distribution system, and assess the proper cost allocation for pole attachments and maintenance.

For example, many California communities are adjacent to forests. Ensuring poles are not overloaded is an essential step in reducing forest fire threats. Moreover, citizens concerned with their neighborhood's aesthetics may want to work with wireless providers to accommodate local design needs—but lose this right with the FCC's imposition of a one-size-fits-all mandate.

Under the pre-existing framework, third parties executed an agreement with cities and resolved potential issues in advance. Additionally, if a city allowed small wireless cells on electric distribution lines, the city and the telecom provider could agree ahead of time on the relocation and reinstallation of the wireless cells if the city chose in future years to underground the distribution lines, or negotiate the removal of defunct attachments that often remain on the poles well beyond their useful life. The city or district could also collaborate with the telecom provider on infrastructure, aesthetics, pole design, and safety issues. It is important that the necessary process be restored.

Municipalities are Facilitating Deployment of Broadband

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 amounted to more than 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.

Legislation Introduced Restores Local Control

While we are hopeful that the court will overturn the FCC Order, considerable damage will occur while that case is pending. H.R. 530 would eliminate this uncertainty and restore local control by vacating the FCC Order. Companion legislation is expected to be introduced shortly in the Senate.

NCPA supports legislation that vacates the FCC order and restores local control over pole attachments and broadband deployment.