



**Statement of the  
AMERICAN PUBLIC POWER ASSOCIATION**

**Submitted to the  
HOUSE ENERGY AND COMMERCE COMMITTEE'S SUBCOMMITTEE ON  
COMMUNICATIONS AND TECHNOLOGY  
For the October 28, 2015, Hearing on  
“Breaking Down Barriers to Broadband Infrastructure Deployment”**

**(Submitted October 28, 2015)**

The American Public Power Association (APPA) appreciates the opportunity to provide the following statement to the House Subcommittee on Communications and Technology on the October 23, 2015, “Pole Attachments Discussion Draft” (discussion draft) that will be addressed at the hearing on “Breaking Down Barriers to Broadband Infrastructure Deployment.” APPA is the national service organization for the more than 2,000 not-for-profit, community-owned electric utilities in the U.S. Collectively, these utilities serve more than 48 million Americans in 49 states (all but Hawaii). APPA was created in 1940 as a nonprofit, non-partisan organization to advance the public policy interests of its members and their customers. We assist our members in providing reliable electric service at a reasonable price with appropriate environmental stewardship. Most public power utilities are owned by municipalities, with others owned by counties, public utility districts, and states. APPA members also include joint action agencies (state and regional entities formed by public power utilities to provide them wholesale power supply and other services) and state, regional, and local associations that have purposes similar to APPA. Collectively, public power utilities deliver electricity to one of every seven electricity consumers. We serve some of the nation’s largest cities, including Los Angeles, CA; San Antonio, TX; Austin, TX; Jacksonville, FL; and Memphis, TN. However, most public power utilities serve small communities of 10,000 people or less.

APPA is supportive of efforts to promote the development of broadband. More than 100 public power utilities currently provide broadband services to their residential customers and many more provide such services to businesses. While many APPA members do not provide broadband services, they understand the importance of broadband for economic development and the quality of life of their customers, who also happen to be their owners. APPA commends the Subcommittee for seeking to promote broadband infrastructure development, a goal that we share. However, APPA does not believe the changes proposed by the discussion draft that would impact public power would further this important goal.

**Background**

In 1978, Congress passed the Pole Attachment Act, which added Section 224 to the Communications Act of 1934, to require the Federal Communications Commission (FCC or Commission) to establish

subsidized rates for pole attachments for the then-new cable industry. Under the law, public power and rural electric cooperative utilities were exempted from this requirement “because the pole attachment rate charged by municipally owned and cooperative utilities [were] already subject to a decision-making process based upon constituent needs and interests.” This exemption has continued (despite claims that the exemption would lead to excessive rates charged) through multiple telecommunications reform efforts, including enactment of the Telecommunications Act of 1996, because Congress maintained that the existing process is appropriate and adequate. Attachment rates are determined at the local level and, if an entity is seeking excessive pole-attachment rates, the affected operator has the remedy of taking the issue to the local government and community to challenge that rate.

This 37 year policy of exempting public power and cooperatives from federal pole attachment regulation has worked well because Congress correctly recognized that consumer-owned, not-for-profit electric utilities will act in the best interests of their customers. Any communications entity seeking to attach to a pole that feels it is not being dealt with fairly has the remedy of going to the city council or utility board and making its case. It is not in the mayor’s or city council’s interest to prevent entities from attaching to poles and bringing in broadband services their constituents want and need.

### **APPA’s Views on the Pole Attachment Discussion Draft**

**Reporting Requirements on Pole Attachment Rates and Locations.** APPA is very pleased that the discussion draft does not seek to repeal the public power/cooperative exemption in Section 224 of the Act. It further validates and reinforces the long-term policy by Congress that consumer-owned electric utilities are best situated to balance competing local needs, and to make decisions in the best interests of their customers and that local accountability and local remedies are available and sufficient to deal with disputes about rates or the make ready process. APPA, however, is concerned that the reporting requirements in the discussion draft lay the groundwork for future repeal of the exemption. There is no need for the FCC to create a database of rates charged by individual utilities, especially utilities the Commission currently has no jurisdiction to regulate. In the 2010 National Broadband Plan, the Commission recommended to Congress that it should “consider amending Section 224 of the Act to establish a harmonized access policy for all poles, ducts, conduits, and rights-of-way.” In making this recommendation, the FCC singled out the exemption for “poles owned by cooperatives, municipalities, and non-utilities,” and poles in states that have adopted their own system of regulation, noting that 85 million poles are not subject to its jurisdiction. The record is pretty clear that the Commission wants to expand its regulatory reach to every single pole in the country owned by every type of utility. States and localities are better able to develop these policies than federal bureaucrats located in Washington who have very little understanding of how electric utilities operate or any interest in ensuring that electric ratepayers do not subsidize for-profit communications companies through pole attachment rates that do not accurately reflect the cost of attachment.

Furthermore, APPA is very concerned about the regulatory burden the annual reporting requirements on rates and locations would impose on public power utilities. Most public power utilities serve communities of 10,000 or less and most qualify as small businesses under the Regulatory Flexibility Act. In smaller communities, the electric utility shares employees with the local government. In others, they have only a handful of staff. These utilities all have distribution poles, so all would be subject to these

reporting requirements. Yet, they lack the manpower and/or resources to submit such data to the Commission. APPA respectfully urges the Subcommittee to drop the annual reporting requirements on pole attachment rates and locations. Including them undermines the policy goal of retaining the public power/cooperative exemption and imposes an unnecessary regulatory burden on APPA members that lack the resources and manpower to comply with such requirements. In addition, there are national security and public safety issues with the cataloging of pole locations in a federal database.

**Nondiscriminatory Access to Poles.** APPA supports the Subcommittee's goal of ensuring nondiscriminatory access to poles. As a policy matter, APPA has long encouraged its members to allow all communications attachments regardless of classification. If an entity seeking to attach to a pole is not classified as a telecommunications carrier or cable television system, it should have the right to access poles to offer broadband services. While the FCC's open internet order reclassified internet access as a telecommunications service rather than an information service, thus negating the need for language to give broadband providers the right to attach, APPA supports the Subcommittee making it clear that all communications entities should have the right to attach. However, APPA is concerned that application of the nondiscriminatory access language in subsection (f) to public power and cooperative electric utilities that are otherwise exempt from Section 224, could have the unintended consequence of giving the FCC jurisdiction over public power utilities for violations of Section 224(f)'s nondiscriminatory access requirements. APPA respectfully recommends that the Subcommittee drop the proposed language change to Section 224(a)(1) imposing the nondiscriminatory requirements on exempt public power and cooperative utilities. APPA members have no reason to discriminate against entities that want to attach to poles to offer broadband services. If the Subcommittee is not willing to drop such language, APPA respectfully requests that it revise the discussion draft to make it clear that the FCC does not have enforcement authority over exempt public power and cooperative electric utilities through the proposed language that would be added to Section 224(a)(1) that subjects all utilities to the nondiscriminatory provisions of subsection (f).

In addition, APPA is concerned how the language subjecting public power and electric cooperatives to the nondiscriminatory access provisions of subsection (f) in combination with the elimination of the incumbent local exchange carrier (ILEC) carve-out in Section 224(a)(5) would impact our members. The striking out of that language would mean ILECs are entitled to the same rates, terms, and conditions as telecommunications carriers and cable television systems. This would essentially provide ILECs with the ability to unwind provisions of their joint use agreements with electric utilities that they do not like without having to grant the utilities reciprocal rights. These proposed changes in the discussion draft could result in ILECs asserting that their joint-use agreements are discriminatory and that the Commission thus has jurisdiction over these purported violations.

APPA thanks the Subcommittee for the opportunity to comment on the discussion draft and looks forward to working the Subcommittee on improving the language.