

NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

Resolution 2017-09

URGING FEDERAL OFFICIALS TO RECOGNIZE STATE AND LOCAL AUTHORITY TO MANAGE TELECOMMUNICATION POLE ATTACHMENTS TO ENSURE SAFE, EFFICIENT AND EQUITABLE PRACTICES

WHEREAS, the Federal Communications Commission (FCC) has found that advanced telecommunications services such as broadband Internet services are essential, play a critical role in the economy of the United States, and are crucial for access to education, employment, healthcare, and government information; and

WHEREAS, the FCC has found that immediate action should be taken to facilitate and accelerate the deployment and access of such capability, and close the rural digital divide, by removing barriers to infrastructure investment, deployment and competition in the provision of broadband Internet services¹; and

WHEREAS, the National Association of State Utility Consumer Advocates (NASUCA) strongly supports federal, state and local telecommunications policies which foster and encourage the development and deployment of essential broadband Internet services throughout the United States while preserving the prerogatives of the state and local Government to ensure safety, reliability and appropriate engineering standards for the nation's critical telecommunications and advanced technology infrastructure; and

WHEREAS, federal, state and local regulators have noted and approved the use of utility distribution poles as an equitable and financially efficient means to site communications equipment to accelerate deployment of essential telecommunications, enhanced communications, and broadband internet products and services to all consumers;² and

WHEREAS, state and local jurisdictions have statutory authority over the placement of communications equipment on utility poles and in public rights of way (PROW), taking into account safety, reliability, reasonable cost, preservation of historic structures, community aesthetics, competitive neutrality,³ and benefits of advanced communication networks; and

WHEREAS, cooperation across jurisdictions and amongst pole owners and attachers is necessary to promote the deployment of telecommunications facilities and broadband infrastructure, and such cooperation may include agreements to streamline negotiation procedures, rights-of-way approvals, standardize pole attachments and permitting, as well as

¹ In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, NPRM, NOI and Request for Comment, FCC 17-37 (rel. April 21, 2017), at ¶1.

² In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, NPRM, NOI and Request for Comment, FCC 17-37, (rel. April 21, 2017), at ¶¶ 3-4.

³ 47 U.S.C. § 253(b), which provides that a State may adopt “on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”

modifying any unreasonable conditions, requirements, or fees that may have the effect of prohibiting the provision of telecommunications services; *and*

WHEREAS, federal law provides that states may “reverse preempt” the FCC in matters relating to pole and conduit attachments and access (47 USC 224), while states retain the right to evaluate, adopt or revise FCC orders pertaining to pole and conduit attachments at will; and

WHEREAS, communications providers under the FCC’s jurisdiction have rights to attach equipment to utility distribution poles under Section 224 of the Telecommunications Act (Act)⁴; and

WHEREAS, access to poles, including the preparation of poles for new attachments, must be timely in order to constitute just and reasonable access under Section 224 of the Act⁵; and

WHEREAS, a "one-touch make-ready process" (OTMR) makes preparing poles for fiber optic deployment more efficient by avoiding delays by having all make-ready work performed at the same time by a single crew instead of crews from multiple and often competing entities;⁶ and

WHEREAS, in situations where an attacher with equipment placed on a pole fails to meet make-ready statutory and regulatory requirements, a one-touch make-ready procedure would allow new attachers to use utility-approved contractors to perform “routine” make-ready work (i.e., infrastructure shifts in the ordinary course of business) and also to perform “complex” make-ready work (i.e., make-ready work that reasonably would be expected to cause a customer outage) that is permitted and meets applicable federal, state and local pole attachment criteria;

NOW, THEREFORE, BE IT RESOLVED, that because state and local regulators, in collaboration with the FCC, play an essential role in developing pole attachment policy and regulation to ensure safety, reliability, appropriate engineering standards and efficient plant deployment to support the nation’s critical telecommunications and advanced technology infrastructure, state and local authority should not be preempted; and

BE IT FURTHER RESOLVED, that federal, state, and local regulators should establish a comprehensive list of appropriate “best practices” which could be employed by states in an effort to advance policies by the best means available; and

⁴ 47 U.S.C. § 253(b), which provides that a State may adopt “on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”

⁵ Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, WC Docket No. 07-245, GN Docket No. 09-51, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11864, 11873, para. 17 (2010).

⁶ Absent a one-touch make-ready process, preparing poles for fiber optic deployment requires coordination between multiple entities, including competitors with an incentive to impede the ability of alternative providers to deploy equipment. *See*, for example, *AT&T v. Louisville (Google Fiber), BellSouth Telecomms., LLC v. Louisville/Jefferson Cty. Metro Gov't*, 2017 U.S. Dist. LEXIS 130270, 2017 WL 3528557, August 16, 2017. The court found that Louisville's one-touch make-ready law, Ordinance No. 21, falls within Louisville’s authority to manage its rights-of-way and was valid.

BE IT FURTHER RESOLVED, that NASUCA urges federal, state and local regulators to establish effective requirements and regulations to streamline and facilitate pole attachments and accelerate the deployment of advanced broadband internet services; and

BE IT FURTHER RESOLVED, that federal, state and local regulators should consider establishing effective requirements and regulations to authorize one-touch make-ready procedures allowing new attachers to use utility-approved contractors to perform make-ready work in situations where an attacher fails to comply with make-ready requirements; and

BE IT FURTHER RESOLVED, that NASUCA authorizes its Executive Committee to develop specific positions and to take appropriate actions consistent with the terms of this resolution. The Executive Committee shall advise the membership of any proposed action prior to taking such action, if possible. In any event, the Executive Committee shall notify the membership of any action taken pursuant to the resolution.

**Approved by NASUCA:
November 12, 2017
Baltimore, Maryland**