

# Pole Attachments 101



# Overview

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- Joint use vs. pole attachments
- Pole attachments
  - Access is mandatory
  - Rates are subsidized by utility customers
- Effect on the safety, integrity and reliability of critical infrastructure
- Pole attachment issues should be comprehensively addressed in 2006 telecommunications legislation:
  - Safety and reliability
  - Jurisdiction
  - Rates



## An Illustrative Joint Use Pole with Pole Attachments

# Joint Use and Pole Attachments

There is a difference

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- **Joint use** is sharing the use of poles, by mutual agreement, between pole-owning utilities, typically the local telephone company (Incumbent Local Exchange Carrier or "ILEC") and the electric utility. Space required is generally 1.5 - 3 feet for telephone attachments.
- **Pole attachments**, originally by mutual agreement but later by federal statute and regulation, provide non-pole-owning cable and telecommunication service providers (e.g. Cable TV, Competitive Local Exchange Carriers or "CLECs") with access to a utility's distribution poles, conduits, and rights of way for:
  - Installing fiber, coaxial cable or wires, and other equipment;
  - Building an interconnected network; and
  - Reaching customers.

Space requested for pole attachments is typically one foot.

# Background: Joint Use

## Purposes and Examples of Cost-Sharing Methods

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- Joint use purposes are simple:
  - Reduce the cost to consumers;
  - Share the high cost of infrastructure fairly and equitably;
  - Minimize the visual impact of two separate pole networks; and
  - Minimize roadway hazards.
- Common joint use cost-sharing methods:
  - Shared burden of ownership with each party owning a similar number of joint use poles (i.e., parity);
  - Joint ownership of each joint use pole; and
  - Other methods used in some regions.

# Background: Joint Use

## Maintaining Parity and Sharing Other Costs

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- Many joint use agreements provided for a nominal fee (\$2 to \$3) that the party with the fewer number of joint use poles paid to the party with the greater number of poles, as an incentive to reestablish parity.
- Many agreements required the party with the fewer number of joint use poles to set new poles until parity was again restored.
- Some divided the responsibility for different aspects of the associated maintenance work.
- Little or no money would change hands.

# Background: Joint Use

## What Changed

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- Some ILECs began to see the \$2 to \$3 incentive/joint use charges as a bargain “pole attachment rate” and abandoned the setting of joint use poles.
- Failing to set poles and maintain parity can be a violation of the terms of joint use agreements.
- For many reasons, over time electric utilities came to own the majority of joint use poles.

# Background: Joint Use

## Consequences For Electric Utilities



Ownership burdens (capital costs, operation, pole and right of way maintenance) fell to electric utilities and their customers.

Telephone utilities divested vehicles and equipment, personnel and contractors for setting and maintaining poles.

Electric utilities became principally responsible for emergency storm restoration, even for ILEC-owned poles used by electric utilities.

# Background: Joint Use

## Joint Use Rates

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- Some joint use agreements have been renegotiated recently, to more accurately reflect:
  - New ownership realities (i.e., majority electric); and
  - Different amount of space now used by ILECs.
- A negotiated rate methodology was established to divide the annual cost of owning a joint use pole between the electric and telephone companies.
- Key determinants are:
  - Percent of pole space used by each utility;
  - Annual cost to an owner of maintaining a pole; and
  - Annual cost to an owner for capital expense and return.

# Summary of Joint Use

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- Joint use arose between electric and telephone utilities.
- Since both utilities are regulated by the state PUC, so are their contracts and relations with each other.
- Agreements originally based upon parity, but evolved to allocate costs when telephone companies stopped setting or owning poles.
- Cost allocation designed to prevent subsidization by electric and telephone utility customers.

# Pole Attachments

## Pole Attachment Act of 1978

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- Investor-owned electric and telephone utilities first subjected to FCC pole attachment regulation.
- Provided low (i.e., subsidized) “pole attachment” rates to cable TV.
- Government-owned utilities (TVA, PMAs, municipal, etc.), cooperatives (telephone and electric) and railroads are exempt.
- Policy goal: to encourage a new market entrant (cable TV) to enter the video business.
- Did not address protection of the utility system.

# Pole Attachments

## Telecommunications Act of 1996 – Access

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- Intended to promote competition in telecommunication and cable markets.
- Access rights expanded to include telecommunications providers.
- Access to utility poles made mandatory.
  - Exception made for utilities only where there is “insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.”

# Pole Attachments

## Access Issues – FCC Regulation under 1978 & 1996 Acts

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### Examples of problems:

- Has allowed pole attachments without notification (prevents engineering evaluation for pole strength, clearances, grounding, guying etc.).
- Has allowed “overlapping” of existing attachments with additional facilities without notification.
- Has compromised safety and reliability requirements for the installation of cable or telecommunications facilities.
- Has often failed to support utility efforts to inspect for safety violations and capacity overloading.

# Pole Attachments

## Telecommunications Act of 1996 – Rates

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- Continued the subsidized cable TV attachment rate for, “any pole attachment used by a cable television system solely to provide cable service.”
- Established the possibility for a slightly higher, yet still subsidized attachment rate for, “pole attachments used...to provide any telecommunications services” (“CLEC rate”).
- Deferred the CLEC rate until 2001, and the lower Cable rate was continued. Any increase to the CLEC rate was phased in over 5 years, 2001-2006.
- Excluded ILECs from the new CLEC rate, because they were excluded from the definition of “telecommunications carriers.”

# Joint Use And Pole Attachments

## Rate Summary – Typical Example

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### Joint Use rates:

- Joint use ILEC rate = \$ 40.80 (2 party cost share)

### Pole Attachment rates:

- FCC Cable TV rate = \$ 6.63 (subsidized)
- FCC CLEC rate after 2006:
  - “urban” = \$ 10.02 (subsidized)
  - “rural” (rare) = \$ 15.12 (subsidized)

# Pole Attachments

## Telecommunications Act of 1996 – Competitive Disparity

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- ILECs (and electric utilities) are subject to existing joint use agreements.
- Cable TV companies get mandatory access, cable-only rates
  - Some potentially could move to a CLEC rate...if the FCC ever decides to act on cable-provided telephone service (VoIP).
- Other telecommunications providers get mandatory access and the slightly higher CLEC rate.
- Electric and ILEC customers are subsidizing cable companies and other telecommunications providers.

# Pole Attachment Rates

## What The Competitively Neutral Methodology Should Be

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- Each entity should pay for the space it uses.
- Each entity should share equally in the cost of all other space on the pole.
- No distinction among:
  - Types of companies (cable or CLEC);
  - Types of service (internet, cable or telephone); or
  - Types of wireline facility installed (fiber, coaxial cable or twisted pair).

# Pole Attachments

## Effect on Critical Infrastructure

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- Competitive access has been the primary emphasis of federal legislation and regulation.
- Infrastructure protection and proper cost allocation have not been adequately addressed.
- Pole attachments substantially affect the safety and reliability of the infrastructure upon which electric, telephone, cable, and other communications services rely.

# Pole Attachments

## Effect on Critical Infrastructure



Electric and Telephone distribution infrastructure are critical components used to provide electric and communications services to homes, businesses and government.

Public safety agencies, energy production and delivery, financial markets, telecommunications, transportation, health care, clean water and sanitation – all depend on reliable electric and communications services.

# Pole Attachments

## Effect on Critical Infrastructure

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Attachments to electric and telephone distribution infrastructure affect:

- Structural integrity, safety, security, reliability;
- Operation and maintenance costs;
- Susceptibility to damage in ice and wind storms;
- Restoration following natural disasters and other emergencies; and
- Public and employee safety.

# New Proposed Federal Legislation

## Joint Use / Pole Attachments – Access and Rates

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- Proposed telecom legislation raises issues related to joint use / pole attachment access rights and rates, in order to promote video competition.
- Both the Ensign–McCain bill (S. 1504) and the Barton staff discussion draft would:
  - In effect, extend subsidized pole attachment rates to all providers, including ILECs; and
  - Threaten existing joint use agreements.

# Pole Attachments

## Should Be Addressed in Telecommunications Legislation

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- 1978 and 1996 federal legislation focused almost exclusively on mandatory access and subsidized rates for cable TV and telecommunications companies (albeit slightly higher than cable).
- Safety, integrity and reliability issues important to the protection of critical electric and telecommunications infrastructure have not been adequately addressed.

# Electric Industry Priorities

## Safety and Reliability

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Protect critical wireline infrastructure that supports both electric and communications services by providing for:

- Agreements between the parties;
- Certification of the number of attachments;
- Attachment notification; and,
- Payment of “make-ready” costs (e.g., planning, engineering & construction).

# Electric Industry Priorities

## Rates

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### Eliminate subsidies and preferential treatment:

- Eliminate pole attachment subsidies to communication giants;
- End preferential treatment of different communication technologies; and
- Ensure that all costs of critical wireline infrastructure are shared proportionally among those using it.
- Recommended Annual Pole Cost allocation formula:
  - Space used by attaching party as % of usable space; and
  - Equal share of all other space among all paying attachers, including the pole owner.

# Electric Industry Priorities

## Jurisdiction

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### Shift regulatory focus to the states:

- Local wireline infrastructure safety, integrity, and reliability is largely dependent on local circumstances (e.g., geography, weather) and failures have local consequences (e.g., service interruptions, power outages);
- State commissions are uniquely experienced and qualified to oversee local electric and communications service, and they already do so;
- Local oversight, not national policy, already applies to most underground telecommunications facilities (e.g., “street cuts”); and
- The state commissions are the only regulatory body representing the consumer interest of both electric and communications consumers.

# Electric Industry Priorities

## Existing Joint Use Agreements

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- No abrogation of existing joint use agreements with ILECs.
- Existing contracts were freely negotiated and have adequate modification and termination provisions.

# For More Information

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Contact:

Washington Representative  
for your shareholder-owned electric utility

Or

Edison Electric Institute

[www.eei.org](http://www.eei.org)

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