

# TENNESSEE CABLE TELECOMMUNICATIONS ASSOCIATION

## POLE ATTACHMENT REFORM IN 2010

### OBJECTIVE

To ensure that reasonable terms and conditions of pole attachment contracts will be the standard in Tennessee.

### BACKGROUND

- In order to deliver services, such as cable television and high-speed Internet access, communications companies must attach their wires (e.g. coaxial cable and fiber optic cable) to utility poles owned by municipal electric systems and rural electric cooperatives. These are known as *pole attachments*.
- In Tennessee, municipal electrics and rural electric coops require cable companies to sign *pole attachment contracts*. These contracts are currently NON-negotiable due to the inherently unequal bargaining power of the utilities. The cable industry has no venue to resolve pole negotiation issues.
- Unlike private electric providers, TN municipal electrics or rural electric cooperatives are publicly owned and not regulated by the federal law due to an exemption in the 1978 Federal Pole Attachment Act. This is critical because federal law provides extensive regulation including a formula for the calculation of reasonable cost-based rates.

### SITUATION

- Over the last several years, cable operators and other attachers to municipally or cooperatively owned utility poles in TN have struggled to obtain fair, reasonable and non-discriminatory rates, practices and procedures for the use of those facilities. Fair and reasonable terms are the standard for investor-owned utilities and should apply to municipal electrics and rural electric cooperatives in TN. Exorbitant pole rates inhibit the deployment of digital cable television, telephone and broadband services – especially in rural areas.
- In TN, the average rate for the three largest investor-owned utilities – American Electric Power, CenturyLink and AT&T – is \$5.80. The average national regulated utility pole attachment rate for investor-owned utility is \$6.23 per pole. In stark contrast in TN, the average municipal electric pole rate is \$14.86 per pole and the average rural electric cooperative pole rate is \$10.85 per pole
- In addition, cable operators are also subject to arbitrary fees such as application fees, make ready costs, and anchor fees that amount to over \$2,000,000 per year. Pole attachment rates have become a PROFIT making venture not reasonably related to costs.
- The rates are no longer fees in TN...they are outrageous taxes applied arbitrarily and without statutory authority. In Tennessee:
  - Municipal electric rates are as high as \$34.72 per pole and as low as \$4.91 per pole.
  - Rural electric cooperative rates are as high as \$19.61 per pole and as low as \$4.75 per pole.

### Bill References

Support SB1508/HB1743 (Burchett & Faulk/Tindell)    Support SB1977/HB1908 (Burchett/McManus)

## Federal Communications Commission (FCC) Formula for Electric Utility Pole Rates

Many pole attachment complaints allege that the annual rates charged for attachments are not just and reasonable. As directed by Congress, the FCC has devised a formula for calculating the maximum lawful rate that can be charged for an attachment to a pole.

### FCC FORMULA:

**Maximum Rate = A (Space Factor) x B (Net Cost of Bare Pole) x C (Carrying Charge Rate)**

**A (Space Factor) =** 
$$\frac{\text{Space Occupied by Cable (1 foot)}}{\text{Total Useable Space (13 feet)}}$$

**B (Net Cost of Bare Pole) =** 
$$\frac{\text{Gross Pole Investment} - \text{Depreciation Reserve (Poles)} - \text{Accumulated Deferred Income Taxes} - .15 \text{ of Net Pole Investment}}{\text{Number of Poles}}$$

**C (Carrying Charge Rate) =**  
Depreciation Expense + Administrative Expense + Maintenance Expense + Normalized Taxes + Rate of Return