

March 6, 2019

Members of the Legislature
State of Georgia

Dear Legislator,

We understand that you are undertaking a review of legislation, SB 2 and HB 244, which would allow authorize electric membership corporations and their affiliates to provide broadband services and would also require compliance with requirements in determining rates for attachments to utility poles by communications service providers. We appreciate the opportunity to share our thoughts on this important issue.

The Institute for Policy Innovation (IPI) is a 32 year-old free market policy think tank. We emphasize individual liberty, limited government, innovation and free markets. IPI does not lobby and does not engage in political activity, but we do analyze legislation and make recommendations, and we hope you will consider our input in this letter.

We have long had an interest in communications policy across the country, and have testified several times over the years in Georgia. Our interest is driven by our commitment to advancing ideas to grow our economy, and our understanding that technology is a key part of that formula. We have worked with the federal government and in a variety of states to help craft successful communications policy. This interest is what led us to discover the proposals under consideration in Georgia.

We are encouraged that the legislature would allow Georgia's non-profit Electric Membership Coops (EMCs) to enter the communications marketplace in unserved areas of the state as provided for in the committee substitute to HB 244 and the committee substitute to SB 2. This will help address any digital divide in such areas by providing even more opportunity for broadband service. The legislations other provisions are also critical. Specifically, HB 244 would mandate Federal Communications Commission (FCC) rates on EMC pole attachment to reduce the costs and burdens for service expansion for attachment. In the Senate, SB 2 caps pole attachment fees at current rates including strong non-discrimination provisions applying to all EMCs regardless of whether they have or engage in leasing or providing broadband facilities or services.

Some might be concerned about such price regulation, arguing that markets should be left to operate without more legislative involvement. But this is not an issue of markets or of market failure, because *there is no free market for attaching to electric poles*. In fact, not being able to attach communications equipment to these poles at a reasonable rate is a significant impediment to the market, especially in rural areas.

We must ensure that owners of utility poles – especially now that they may be participating in the broadband business – are not able to exclude competitors whether explicitly or by excessive

rates. In identifying barriers to broadband deployment, the Federal Communications Commission has recognized that the lack of reliable, timely and affordable access to physical infrastructure – particularly utility poles – is often a significant barrier and that “utilities by virtue of their size and exclusive control over access to pole lines are unquestionably in a position to extract monopoly rents...in the form of unreasonably high pole attachment rates.” Such fees can amount to 20% of the total cost of broadband deployment, as explained in the FCC’s National Broadband Plan. That plan provides that pole access should be reliable and timely, and rental rates as low and close to uniform as possible. As testimony before various Georgia legislative committees has explained, *the average pole rates currently charged by the Georgia EMCs are over three times that which the Federal Communications Commission says is just and reasonable.* Therefore, safeguards on what the monopoly utility can charge and demand for rates, terms and conditions are needed, especially as you authorize EMCs’ entry into the same market. With the pole attachment fees often not based on real costs, these charges essentially function as a broadband tax, slowing broadband deployment and availability exactly in those areas that need it most.

Like Not Being Treated As Like

Nearly ten years ago we first drafted principles for state communications policy. One of the key principles is that communications and tax policy should be technologically neutral. Why should one method for accessing the Internet be highly taxed and regulated, while others are not? Why are communications companies more highly taxed and regulated than other industries? One would think they should be taxed at lesser rates given our reliance on communications to improve so many facets of life.

Why should co-ops be in the position to arbitrarily raise costs on broadband providers? And why would a state ever allow a provider to be in the position to extract payments of their choosing from their competitors?

A policymaker’s goal should be neutrality, so that technologies and companies succeed or fail in the marketplace, and not because of extra charges applied only on certain competitors in a market.

Slowing the Broadband Rollout

To meet the ever-increasing demand for new technology and faster speeds, broadband companies must constantly invest to increase capacity for their existing lines and add lines which require pole attachments to poles. Attaching to a pole is really the only practical way to expand service as the costs for burying lines underground can be prohibitive, especially in rural areas.

As costs escalate, some broadband providers will begin to question the reasonableness of the rates, which in turn has led some of the utilities to stop allowing pole attachments at all. Rather, government should be asking what it can do to enhance broadband availability and penetration. Requests to affix new fiber lines to an existing pole should be welcomed, even encouraged, with rates that are reasonable and designed to encourage greater broadband roll out. Slowing down of the broadband rollout stands in absolute opposition to the policy of greater broadband deployment across the country.

Current delays because of high costs, and the future longer delays brought on by yet even higher costs, result in limited coverage for consumers and in some cases no service at all. These high fees deny the digital opportunity to many, and particularly limit innovation at the edge of the networks. The cause and effect are clear, as the cost of making an investment increases the amount invested in capital improvements and expansion will decrease, there will simply be less to invest as the increased tax burden decreases capital available for investment. And it is precisely capital investment that results in the building of plant and purchase of equipment that leads to new job creation.

Fortunately a Better Alternative Is Available

Fortunately, the committee substitute to HB 244 and the committee substitute to SB 2 have been introduced, and these do take into account our concerns. These proposals aim to create a just, fair and non-discriminatory system for all broadband providers. In this case pursuing fairness will also facilitate greater competition and thus greater investment in Georgia. In return, that investment in broadband infrastructure leads more jobs for those in the state.

We sincerely hope that the elected leaders of Georgia will stand for just treatment and fairness in their efforts to encourage broadband deployment and competition. We would be delighted to work with you in this important process.

Sincerely,



Bartlett Cleland
Research Fellow



Tom Giovanetti
President