

# **Pole Attachment Rates in Michigan Background Information**

Michigan House of Representatives  
Energy and Technology Committee  
October 8, 2013

Michigan Public Service Commission  
Department of Licensing and Regulatory Affairs

# Federal Pole Attachment Act

- 1978 – Congress amended the Communications Act of 1934
- Gave Federal Communications Commission authority over rates, terms and conditions of attachments by cable system operators to utility/telephone poles
- Allowed states to “pre-empt” federal regulation

# Michigan Pole Attachment Act

- In 1980, Legislature enacted PA 480
- Adds Sec. 6g to PA 3 of 1939 (MPSC Enabling Act)
- Gives MPSC with the ability to regulate the rates for "attaching parties" attaching to poles owned by "utilities"
- Provided MPSC the ability to assert jurisdiction over pole attachments in lieu of FCC
- MPSC sets rate of \$4.95 per pole per year in a series of settlement agreements (1986)

# Definitions

- Defines "utility" as any public utility subject to the regulation and control of the commission that owns or controls, or shares ownership or control of poles, ducts, or conduits used or useful, in whole or in part, for supporting or enclosing wires, cables, or other facilities or apparatus for the transmission of writing, signs, signals, pictures, sounds, or other forms of intelligence, or for the transmission of electricity for light, heat, or power
  - i.e., **electric provider or telephone (wireline) provider**
- Defines "attaching party" as any person, firm, corporation, partnership, or cooperatively organized association, other than a utility or a municipality, which seeks to construct attachments upon, along, under, or across public ways or private rights of way
  - i.e., **cable** (initially), but has come to encompass any party NOT an electric or telephone provider or municipality (could include educational institutions, police/fire, private business networks, etc.)

# Michigan Telecommunications Act

- In 1995, Legislature enacted PA 216
- Adds Sec. 361 to MTA
- Applies only to attachments made by telecommunications or cable providers or educational institutions to poles owned by telecommunications providers
- Providers set rates (not MPSC); must be “just and reasonable”

# Notable MPSC Cases

- U-10831 – generic proceeding to establish statewide rate for attaching to electric utility poles
  - set at \$3.74 in 1997 order
- U-10374 – GTE North, Inc. v Indiana Michigan Power
  - MPSC concluded that telephone companies are considered "utilities" under the Pole Attachment Act, thus MPSC doesn't have jurisdiction over the dispute
- U-14038 – McLeodUSA v Detroit Edison Co.
  - Relying on GTE decision, concluded that telecommunications providers (even CLECs that only own one or a few poles) are considered "utilities" under Michigan Pole Attachment Act

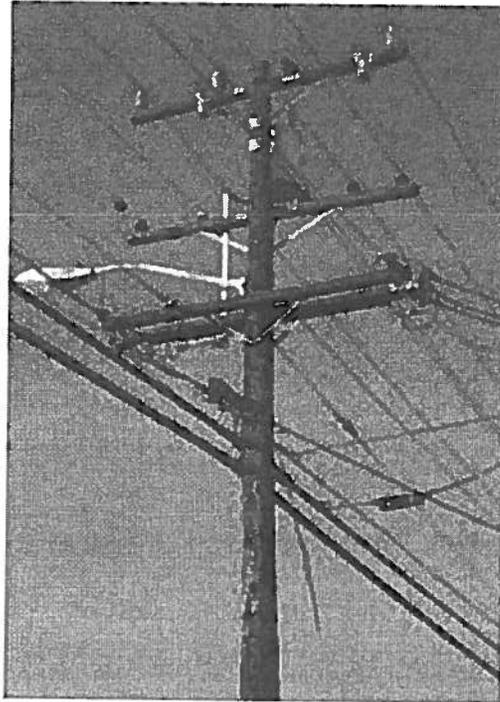
# FCC Order 11-50

- Most recent federal action on pole attachment rates
- In response to National Broadband Plan
- Under previous FCC formula, telecommunication providers paid pole attachment rates that were significantly higher than rates paid by cable providers.
- FCC's revisions modify pole attachment rules (April 7, 2011)
  - Lower attachment rates for telecommunications providers to be commensurate with the cable rates
  - Increase pole owners' administrative and operating burdens while diminishing their revenues from noncable attachers.
  - Strengthens and supports competition
- Does not apply to Michigan

# MPSC Jurisdiction over Pole Attachment Rates

		Pole Owner	
		<u>Electric Provider</u>	<u>Telecommunications Provider</u>
Entity Attaching Facilities	<u>Electric Provider</u>	n/a	Negotiated between providers; no regulatory oversight
	<u>Telecommunications Provider</u>	Negotiated between providers; no regulatory oversight	Provider sets own rate;
	<u>Other "Attaching Party"</u> (Cable, Educational Institutions, etc.)	MPSC sets rates	"just and reasonable"

# Questions?



[michigan.gov/mpsc](http://michigan.gov/mpsc)

