

H. 575/ S. 181 Community Media Public Benefits Fund

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House Ways and Means Committee Hearing
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Overview

The pole attachment charge is a tax on private communications providers' pole attachments in the State to support a Community Media Public Benefit Fund.

The Fund will provide more equitable and sustainable financial support for local public, educational, and government (PEG) access organizations in Vermont, whose current funding from cable franchise fees is declining, jeopardizing essential public services, including ongoing access to public meetings and emergency information, connecting communities, and preserving local identity.

Enacting the pole attachment charge is within the State's clear taxing authority and not preempted by federal law or FCC rules.

The Pole Attachment Charge is an Administratively Efficient, Effective and Equitable Means to Address AMO Funding.

1 | Administratively Efficient

Communications providers should have pole attachment agreements with pole owners and will know the number of attachments to ensure they pay the appropriate fees to pole owners. Determining the number of attachments is thus efficient and not burdensome.

2 | Effective and Equitable

Cable companies have long paid 5% of their gross revenue to support AMOs. This model is no longer sustainable or rational. It is more equitable for all communications providers to support the public benefits provided by AMOs without regard to the current legal classification of their services.

The Proposed Pole Attachment Charge is Consistent with the Telecommunications Act of 1996.

1 | The Act Does Not Impact State Tax Authority

“...nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation...”
- § 601(c)(2) (47 USC 152, Note)

2 | The “Effective Prohibition” Provisions Do Not Apply

This savings clause means that Sections 253 and 332(c)(7) cannot be construed to impair the State’s taxing authority.

The tax is not subject to preemption as an “effective prohibition” and is not subject to cost-based fee caps.

The Proposed Pole Attachment Charge is Consistent with the Internet Tax Freedom Act.

1 | The Charge is Not Imposed on Internet Access

The ITFA preempts taxes on “internet access,” which means “a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet.”

The pole attachment charge is not a tax on services of any kind.

2 | The “Effective Prohibition” Provisions Do Not Apply

The ITFA’s preemption of traditional state taxing authority must be read narrowly.

The preemption cannot be read to reach taxes on infrastructure or other non-service based taxes states may opt to impose.

The Proposed Pole Attachment Charge is Consistent with the Cable Act.

1 | The Charge is Generally Applicable

The Cable Act definition of "franchise fee" does not include a tax or fee of general applicability.

The proposed charge is imposed on all communications providers, not just cable operators.

2 | The Charge is Not Based on Cable Operator Status

The Cable Act definition of "franchise fee" includes a tax imposed on cable operators "solely because of their status as such."

The pole attachment charge is not imposed on cable operators solely because they are cable operators; it is based on attachments to poles.

The State has Discretion in Implementing Tax Policy.

1 | Section 253 of the Telecom Act is Not Relevant

The concept of competitive neutrality is based on a savings provision of Section 253(c) of the Telecom Act, which is not relevant because the tax is not subject to preemption under Section 253(a).

2 | The State has Discretion in Tax Policy

Tax policy often aims to incentivize behavior or recognize the need for different tax burdens for different taxpayers.

The State is not preempted from exercising discretion here, including exempting CUDs from the charge.

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