

## [Ballot Form Comments Summary. 22 April 2018](#)

Where possible comments made by Working Group members have been included under specific Article headings. Where comments are more general, they have been included under 'General Comments' at the end of the document.

### [1. Comments Article by Article](#)

#### ARTICLE 1: SHORT TITLE AND PURPOSE

- **Kelleigh Cole:** Utah Governor's Office of Economic Development  
**Comments:** I would strongly recommend that the first footnote be placed in larger print at the beginning of the document in a proper preamble. This is important because as this document is used by the FCC and other groups, the intent needs to be more clear and upfront. Members of the committee have had differing opinions throughout the process and have compromised on parts of the language with the understanding that the document is to encourage deployment but gives states freedom for adjustments. This is such a critical point. Other than that, the document has my full support and I appreciate all of the work by the reconciliation committee to work through these issues.
- **Robert Pepper: Facebook**  
**Comments:** Facebook dissents from the first sentence to Footnote 1 in Article 1. We do not necessarily agree that all of the proposals presented in the State Model Code are within the jurisdiction of State governments (or, at a minimum, all State governments) to adopt. Further, such a statement appears to be inconsistent with the Working Group's acknowledgments later in the footnote that "all States are different and there is no one size fits all solution to broadband deployment" and that States "have different authorities within their constitutions." That said, if "...are within the jurisdiction of State governments to adopt" were changed to "...may be within the jurisdiction of State governments to adopt", we would be comfortable with the footnote and would concur in full with Article 1.

While we are concurring with the definitions, the definition of "broadband" continues to be confusing - including with respect to what constitutes "broadband" in "Unserved" or "Rural" areas - despite lengthy discussions within the Working Group about this definition.

- **Angie Dickison: Wisconsin Public Service Commission**

**Comments:**

My yes vote on all of the articles in the 4/4/2018 version of the draft Model Code is based upon the Footnote 1 in Article 1, which acknowledges that the document is not intended to be a “one size fits all solution for broadband deployment” and that states and tribes are encouraged to review and adopt portions of the code that may best address the situation within their jurisdiction. Additionally, Section 2.e of Article 1 also states that the “articles of the Model Code are modular and severable and may be adopted individually and in whole or in part.”

## **ARTICLE 2: DEFINITIONS**

- **Allen Bell: Georgia Power**

**Comments:**

Article 2, Definition 10 Authority - This term could be interpreted to include Investor Owned Utilities that are already regulated by the FCC. If a State Model Code is to be adopted it should include a clear exemption of Investor Owned Utilities in order to avoid any confusion

Article 2, Definition 39 Micro Wireless Facility - This standard is too large

Article 2, Definition 52 Person - This term can be completely removed and the term "authority" used in its place throughout the Code. Otherwise, IOU's are regulated by both a State that adopts this Code and the FCC

Article 2, Definition 59. 2 - 28 cu ft is not necessary. I have discussed this with suppliers of ancillary equipment and research engineers and no one anticipates the need for this much space on the pole.

- **Brian O’Hara: NRECA**

**Comments:**

Overarching issue: NRECA has major concerns with several definitions in Article 2 which impact our vote on other articles in the draft code. The main concern is that the draft code, if adopted as written, would specifically recommend that states enact laws to bring electric coops under state pole attachment regulation. The Congress recognized the unique structure and local control inherent in the cooperative business model and exempted them from federal pole attachment regulation. Of the 15 States to date that have enacted legislation to streamline small cell/5G siting we understand that EVERY ONE of them have exempted electric cooperatives. NRECA has confirmed that nine state laws include such an exemption (FL, IA, IN, MN, NC, NM, TX, VA, UT) and we expect to have confirmation of the remaining states by the April 25 BDAC in person meeting. The model code is contrary to letter and spirit of the federal rules and over half the states adopting laws to date, and likely all state laws. For brevity, below outlines our top concerns per each section.

Article 2 – The definition of Authority (#10) is extremely broad. As I raised on more than one working group call this could include any entity who rules on a pole attachment application. It would even include a state public utility commission, or other third-party entity, who by state law arbitrates pole attachment disputes. The intent was to limit its application to only state and municipally owned poles but that is not the case. The only entity fully exempt are state courts. Cooperatives should also be specifically exempted. Otherwise, as currently written the model state code’s inclusion of cooperatives is contrary to federal policy over half the states, and likely all the states, that have recently enacted pole attachment laws.

The definition of Owner (#48) includes cooperatives. As currently written the model state code’s inclusion of cooperatives is contrary to federal policy and over half the states, and highly likely all the states, that have recently enacted pole attachment laws.

NRECA offered up a compromise modular definition of Owner that would have given states two options: one that would include cooperatives and one that would exempt them. This was voted down by the working group.

A few other definitions were of concern but these two are our main issue. To bring the model state code in line with federal and a majority of state policy by fully exempting cooperatives would require modification to numerous definitions.

- **Heather Burnett Gold: Fiber Broadband Association**

**Comments:**

Article 2 (66) - The definition of Utility Pole is overly restrictive because of its dependence on Section 224 to define “utility” (which excludes munis and co-ops), and the express exclusion of “electric transmission poles or structures, or light poles, lamp posts, and other structures whose primary purpose is to provide public lighting.” An alternative definition, such as the following from California (Cal. Pub. Utils. Code 9510.5(d)) would be preferable – “Utility pole’ means an electricity or telephone pole, but does not include a street light pole or an electricity pole used solely for the transmission of electricity at 50 kilovolts or higher and not intended for distribution of communications signals or electricity at lower voltages.”

- **Michael Potter: Geeks Without Frontiers**

**Comment:**

I believe that mobile and satellite solutions are an important part of rural connectivity.

- **Tom Sloan: Kansas House of Representatives**

**Comment:** See ‘General Comments’ at the end of the document.

- **Doug Brake: ITIF**  
**Comments:** See 'General Comments' at the end of the document.

### **ARTICLE 3: NETWORK SUPPORT INFRASTRUCTURE REGISTER**

- **Allen Bell: Georgia Power**  
**Comments:** This is a data base. If the communications industry will partner with the owners of the assets they want to utilize, the data base will be provided.
- **Brian O'Hara: NRECA**  
**Comments:**  
Article 3 – NRECA is fundamentally opposed to a database of utility poles. This article is mandatory only for state and municipally owned poles and voluntary for private utilities. Because of the overly-broad definition of “authority” it could make private utility participation mandatory. A database of critical infrastructure, such as the electric poles is a national security concern. One only need to note the myriad hacks of private and public databases in recent years to recognize the implications. Further, the benefits of such a database will pale in comparison to the enormous burden and cost of reporting and updating infrastructure data, as well as creating and maintaining such a database. All these expenses would only add to the overall costs of pole attachments and be borne by pole owners and attachers alike.

### **ARTICLE 4: RIGHTS OF ACCESS TO EXISTING NETWORK SUPPORT INFRASTRUCTURE**

- **Allen Bell: Georgia Power**  
**Comment:** Article 4 is dependent on Article 3
- **Heather Burnett Gold: Fiber Broadband Association**  
**Comment:**  
Article 4 (5.1) - 1. Dark fiber does not meet the definition of “Network Support Infrastructure” which is the basis of this article. In fact Definition 44.2 specifically includes Dark Fiber as an active component of a Communications Network and thus should not included in Article 4. Additionally, dark fiber is a critical strategic component of a municipal network and is often used as an incentive for private companies to supply the communications services

desired by that community. This section could undermine the ability of the community to use its dark fiber for this purpose if the municipality had to make its dark fiber available to all entities on the same competitive neutral terms and conditions. This would undermine many of the models articulated in Article 12 (though we disagree with all of Article 12 for additional reasons). Finally, this provision is ambiguous and unfairly imposes terms and conditions on municipal owners of dark fiber not imposed on others, without regard to the intended use of the fiber (which may be for electric, not communications services).

- **Tom Sloan: Kansas House of Representatives**  
**Comment:** See 'General Comments' at the end of the document.

#### **ARTICLE 5: SPECIAL PROVISIONS FOR RIGHTS OF ACCESS TO POLES IN THE COMMUNICATIONS SPACE**

- **Allen Bell: Georgia Power**  
**Comments:** Change the definition of the term "owner" to not include "person" and replace it with "authority" and I am OK with this section.
- **Heather Burnett Gold: Fiber Broadband Association**  
**Comments:**  
Article 5 (1.8, 1.9., 1.10; 2.1-2.3) - The indemnification provisions are ambiguous and likely over broad. With respect to pole owners, they may be superseded by the pole attachment agreement between the owner and the new attacher. With respect to existing attachers, indemnification should not include any consequential damages or loss of profits. Additionally, section 2 would likely be unnecessary if the definition of "utility pole" was corrected (as noted above). Finally, as a general matter, Article 5 is inconsistent with the OTMR proposal set forth by the Competitive Access to Broadband Infrastructure Working Group and approved by the BDAC on January 24, 2018.
- **Kelly A. McGriff: Uniti Group Inc**  
**Comments:** Article 5 (1.8, 1.9, 1.10; 2.1 through 2.3): Indemnification provisions included by the Committee should not include any consequential damages or loss of profits, as this would be a "poison pill" to any meaningful One-Touch Make Ready proposals. The BDAC should consider revising the language in this Article in this regard to state that damages are limited to direct damages, and exclude indirect, special, consequential and punitive damages.

- **Brian O’Hara: NRECA**  
**Comments:** Article 5 – NRECA members have not reached consensus on one touch make ready. Due to the model code’s application to all cooperatives we are opposed to this article (see concern with definition of “Owner” and “Authority”). In addition, Article 5 contains areas of specific concern. 1.1.3 would appear to allow an attacher’s contractor to undertake OTMR in the power space if a pole owner has approved attachment of a small cell antenna. We would expect any cooperative pole owner approving attachment of a small cell antenna to reach a mutually-acceptable agreement on the deployment, but this gives an attacher the right to access the electric space, which many electric pole owners cannot accept. Additional clarification would be welcome.
- 3.1 Overlashing – NRECA was pleased with the inclusion of a notice requirement, but the notice should be clarified to mean advance notice. Requiring advance notice to the pole owner would be in the best interest of public safety and reliability of the electric grid, and the networks of all attaching communications providers. A proposal calling for advance notice was voted down by the working group.

#### **ARTICLE 6: SPECIAL PROVISIONS FOR RAILROAD CROSSINGS**

No comments on Article 6.

#### **ARTICLE 7: NEW AND MODIFIED INFRASTRUCTURE TO BE BROADBAND READY**

- **Brian O’Hara: NRECA**  
**Comment:** Article 7 – Due to the overly-broad definition of an “authority” in Article 2 this could apply to cooperatives. Cooperatives should be exempt from this section.
- **Doug Brake: ITIF**  
**Comments:** See ‘General Comments’ at the end of the document.

#### **ARTICLE 8: BUILDINGS AND NETWORK ACCESS POINTS TO BE BROADBAND READY**

No comments on Article 8.

## **ARTICLE 9: DEPLOYMENT OF COMMUNICATIONS NETWORK FACILITIES**

- **Allen Bell: Georgia Power**  
**Comments:** The term "deemed approved" and advocating financial caps in legislation that will never be changed are both bad policy.
- **Brian O'Hara: NRECA**  
**Comments:** Article 9 – Due to the overly-broad definition of an “authority” in Article 2 this could apply to cooperatives. Cooperatives should be exempt from this section.  
The inclusion of a "deemed approved" provision and advocating for specific financial caps in legislation, which makes them effectively permanent, are bad policy that NRECA cannot support.

## **ARTICLE 10: STATE FRANCHISE AGREEMENTS**

- **Allen Bell: Georgia Power**  
**Comments:** If a state should choose to adopt this concept, they should develop their own language.
- **Tom Sloan: Kansas House of Representatives**  
**Comment:** See ‘General Comments’ at the end of the document.
- **Brian O'Hara: NRECA**  
**Comments:** Article 10 – Section 2.2 requires the state franchise to establish rules relating to access to “public rights of way and infrastructure.” This should be clarified to state “public rights of way and public infrastructure” to avoid any interpretation that cooperative or other private infrastructure is subject to state franchise control.

## **ARTICLE 11: RURAL BROADBAND DEPLOYMENT ASSISTANCE FUND**

- **David Don: Comcast Corp**

**Comments:**

Article 11, Section 1. Comcast dissents from Article 11.1 as contrary to federal law and policy. Section 254(f) of the Communications Act of 1934, as amended, limits state authority to collect universal service contributions to “every telecommunications carrier that provides intrastate telecommunications services” and requires States to ensure that any rules they adopt in this context are not inconsistent with the FCC’s rules to preserve and advance universal service. Article 11.1 runs counter to Section 254 and the FCC’s implementing rules by requiring “every provider of Communications Services” – which term is defined to include non-telecommunications services – or “[e]very provider of Communications Services and Broadband Dependent Subscription Services” in the State to contribute to a State universal service fund. The clauses in Article 11.1.1 & 11.1.2, which require State Universal Service Administrators to determine assessment methodology and rates “consistent with federal law and FCC policy,” do not save this Section. Under those provision, the Administrator’s discretion only applies to the amount and manner in which the rate is determined, and not to the selection of the providers subject to these rates.

- **Tom Sloan: Kansas House of Representatives**

**Comment:** See ‘General Comments’ at the end of the document.

- **Robert Pepper: Facebook**

**Comments:**

Facebook abstains from Article 11. We recognize and greatly appreciate the extensive efforts of the Working Group to address this difficult and important challenge. We agree that more investment in rural infrastructure is needed, but what also is needed are new models of deploying and upgrading rural connectivity (see, e.g., Article 1 Section 2.d.vi. of the Model Code). Expanding the existing Universal Service system, which needs fundamental reform, and imposing new taxes and fees that will raise prices on consumers is not the best means of improving rural access. Rather, the focus should be on developing new business and investment models to provide more targeted and effective rural and other high cost investment as well as creating new incentives for that investment.

- **Ken Pfister: Great Plains Communications**

**Comments:** As a representative of a rural broadband carrier that is very familiar with the challenges of deploying services in high-cost areas, I support the overall intention of establishing a Rural Broadband Deployment Assistance Fund as part of a state's universal service agenda. However, I do not agree with reducing and capping support in ensuing years of the program (as the language in the Article does) since deployment of broadband is an expensive proposition that requires consistent and predictable funding. The extent of these caps appear to be arbitrary and not based on the true cost of serving the most-rural areas. Nevertheless, I am voting for the Article as in spirit it recognizes the need for additional support to bring broadband to the nation's most-costly locations.

- **Marty Yudkovitz: Cincinnati Bell**

**Comments:**

The elephant in the room is Funding. While Article 11 makes reference to this and provides some very basic ideas worth consideration, the entire BDAC would be well served to acknowledge that the current USF approach is badly outdated and broken (an almost universal view among those in the industry) and, absent a 21st Century solution, much of the fine work done by the BDAC will be either unadopted or ineffective for lack of a realistic, innovative new funding mechanism.

As usual, Unserved Rural America will suffer disproportionately, and the very real, severely damaging Digital Divide will widen, not narrow.

Because there are no easy fixes, there has been little appetite to take on this issue in government. For that very reason, the BDAC is both needed and uniquely positioned to tackle this matter and develop bold new ideas that can at least form a starting point for the discussion.

## **ARTICLE 12: RURAL MUNICIPAL-OWNED BROADBAND NETWORKS**

- **Tom Sloan: Kansas House of Representatives**

**Comment:** See 'General Comments' at the end of the document.

- **Ken Pfister: Great Plains Communications**

**Comments:** As a representative of a rural broadband carrier that has embraced the financial risks of investing in rural markets, I am opposed to municipal entry. While I recognize that our company may be unique compared to larger publicly traded holding companies in our attempts to put our own capital into investing in very rural markets, I oppose in principle the concept of municipal entry. Proper funding of universal service mechanisms at the federal and state levels is a far better way of ensuring very rural markets are served rather than exposing taxpayers to the risk of municipal ownership. Therefore, I dissent with this Article.

- **Heather Burnett Gold: Fiber Broadband Association**

**Comments:**

Article 12 - This article is overly-prescriptive and will inhibit the ability of municipalities to facilitate the build-out of broadband networks in their local communities (either by constructing and/or operating a publicly owned network or by engaging in a public-private partnership for such networks and services).

### **ARTICLE 13: STATE BROADBAND INFRASTRUCTURE MANAGER**

- **David Don: Comcast Corp**

**Comments:** Comcast dissents from Article 13.2.2.4 because this grant of authority has the potential to result in more regulation and additional barriers to broadband entry, contrary to the mandate of this Advisory Committee. Article 13 creates a State Broadband Infrastructure Manager and empowers that office to unilaterally promulgate rules and regulations regarding the deployment of broadband services, as well as establish fees associated with deployment, with few statutory constraints or external checks. The State Model Code Working Group's mission is to craft a model code that streamlines regulation and reduces regulatory barriers to entry. By vesting such broad and unconstrained rulemaking and fee-making powers in the State Broadband Infrastructure Manager, Article 13.2.2.4 serves to undercut the Working Group's mission by increasing regulation and leading to higher costs for broadband deployment.

- **Brian O'Hara: NRECA**

**Comments:** Article 13 – NRECA supports the creation of such entities at the state level to promote broadband deployment. 2.3.1 would create a broadband infrastructure advisory council. The council would be improved with inclusion of representation of the electric utility sector which owns 65 to 70% of all poles across the country. As the owner of most poles, electric utilities are valuable partners in advancing broadband deployment and should have a seat on such a council.

## **2. General Comments**

- **TOM SLOAN: Kansas House of Representatives Statement:**

As the sole policy-maker on the Reconciliation Working Group, my perspective may be significantly different than the others. I must balance state revenues, regulatory framework restrictions, competing telecommunications provider priorities and capabilities, consumer desires/demands/expectations, continually evolving technological capabilities, increasing value for access to the Internet of Things and capabilities, and affordability. I must consider and balance those factors while being technologically neutral.

I support the effort espoused by the Commissioners to address the digital divide, especially as it applies to rural residents and businesses. Unfortunately, I believe that we may have lost sight of that objective as the document and recommendations focus more on accessing municipal infrastructures by broadband providers, than in incenting the private sector to deploy in high cost, low population density areas.

With the above as a caveat, the definition of broadband necessary to bridge the digital divide should be a minimum of 25/3, with both latency and capacity factors. Most urban areas have competitive markets and sufficient customers/revenues to enable megabit service to be both feasible and affordable. Less populous and less affluent areas require broadband capabilities of 25/3 to enable e-government, e-health, e-education, e-commerce, and e-recreation minimally comparable to urbanites'. Less than 25/3 continues the digital divide between served and under-served populations.

The statewide franchise option (Sec. 10) is essential if providers are to be able to bundle multiple technologies in order to cost-effectively reach large geographic regions with sufficient total population to make deployment feasible. Throughout the document, we have endeavored to be technologically neutral, while recognizing that some providers' business plans do not envision deploying to rural areas. While this correlates with my opening comment, a statewide or regional franchise capability facilitates provider planning, flexibility, and technological options (e.g., fiber and fixed base wireless combination). It also ensures reasonable regulatory decision-making time and consistency. Video providers successfully argued in many states that a statewide franchise would improve their ability to cost-effectively deliver services to more communities. The same argument is appropriate for a statewide broadband franchise capability. A statewide broadband franchise is optional, thereby enabling all potential providers the maximum flexibility based on their technologies and business plans.

The true key to incenting rural deployment is providing financial assistance (Sec. 11). Just as urban customers financially indirectly support U.S. Postal Services in rural areas; the federal and state Universal Service Funds support

key affordable, lifeline-like telephone service; and more affluent urban taxpayers support equal educational opportunities in rural areas, so too is some form of subsidization of rural broadband crucial to enable deployment.

There were three fiscal options that were discussed in the Reconciliation Group: 1) federal and state appropriations to support deployment, 2) expanding the base of the federal and/or state universal service funds with dedication of the funds to broadband deployment, and 3) expanding state sales tax collections to include subscription-based broadband services/providers.

Most states do not have sufficient State General Fund Revenues to develop a substantial broadband deployment assistance fund and federal funds for infrastructure are likely to be focused more on highways, waterways, and airports, than on rural broadband.

The majority of discussion focused on expanding the fiscal base for the federal and/or state universal service funds to collect funds from those entities and customers that significantly contribute to the need for infrastructure upgrades. These subscription-based content providers and their customers, unlike the communications infrastructure providers and customers, do not contribute to maintain and expand the broadband infrastructure system necessary for the delivery of their products/services. With a minimum threshold of sales necessary to be included in such a fund, the burden to fund deployment and infrastructure upgrades would, in part, shift from the infrastructure owners to the users of the infrastructure.

The two options discussed to achieve such contributions were: 1) to define subscription-based content providers as being comparable, for this purpose, to infrastructure owners for paying into the federal and/or state universal service funds, and 2) to expand the states' sales tax base to include revenues earned by subscription-based content providers, with those funds dedicated to the state universal service fund.

There undoubtedly are additional fiscal options, but these are the ones that were discussed in most detail. The crucial point is that without additional significant funding, the digital divide will continue and rural residents will increasingly be locked-out of e-commerce, e-health, e-education, e-government, and e-recreation opportunities. That means continued and increasing economic, education, and health care discrepancies and the perpetuation of population and economic flight from rural areas.

[TOM SLOAN COMMENTS ENDS]

- **Angela Stacy: CNX  
Comments:**

I appreciate the efforts of the members of this working group. I acknowledge the many hours of work that were spent to create a final recommendation. Having said that, I cannot support this recommendation. This is effectively a

cost based, preemption model that stands to only benefit the industry who has comprised the overwhelming majority of all opinions.

- **Doug Brake: ITIF  
Comments:**

This document is an earnest and thoughtful attempt to craft a state-level code that would significantly improve the opportunity for broadband deployment. No one could expect a comprehensive broadband model code to be perfect. I have reservations with some parts of our document, but nevertheless generally vote in support of this model code in the hope that the many good ideas it contains will be of use to state legislatures as they consider these issues.

The charter of the Broadband Deployment advisory committee states "the mission of the Committee is to make recommendations to the Commission on how to accelerate the deployment of high-speed Internet access. . . by reducing and/or removing regulatory barriers to infrastructure investment." I believe some aspects of the state model code to be out-of-scope of this mission and would stand up additional regulatory bodies and processes that may frustrate investment in new broadband facilities.

One particular concern is that the proposed state broadband infrastructure manager serves an outsized role, particularly in its relation to the Minimum Network Specification Notice described in Article 7. I also continue to be concerned by the scope of "Network Support Infrastructure," and do not believe that definition 44.2 adequately clarifies the important line between what is subject to access requirements and what is not. As it stands, the only thing holding us back from an extreme regulatory intervention disrupting the successful U.S. practice relying on facilities-based competition is the thin reed of "authority" in definition 45.

- **Betsy Huber: National Grange  
Comments:**

Thanks everyone for all the hard work!