



ELECTRIC COOPERATIVES AND BARRIERS TO RURAL BROADBAND DEPLOYMENT

GOVERNOR'S BROADBAND TASK FORCE

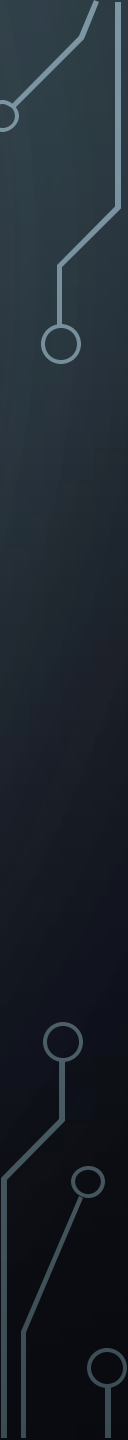
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THE COOP “BROADBAND EASEMENT” BILL

- Introduced March 9, 2020 (HF4268/SF4198)
- Allows a rural electric cooperative the use of any land easement it holds for the purpose of providing electric service to also provide broadband service.
- No need to compensate landowner.



BACKGROUND

BARFIELD V. SHO-ME POWER ELECTRIC COOPERATIVE (8TH CIR. 2018)



3,000 private landowners in Missouri sued the subsidiaries of two electric cooperatives for using existing easements to provide telecommunications (broadband) services.



The existing easements only allowed for providing electricity or functions related to providing electricity to consumers.



The Court held that providing commercial telecommunications services was not allowed under the terms of the existing easements and ordered that the landowners be compensated for the use of the easements for telecommunications services. The litigation resulted in a \$25,000,000 settlement used to compensate landowners and pay for administrative and counsel fees.

PITFALLS FACING THE COOP BROADBAND EASEMENT BILL

- Takings Claims. Coop bill grants electric coops easement rights so broad that it runs risk of Missouri-like Takings Clause claims under U.S. and Minnesota Constitution against the State of Minnesota.
- Shifting Liability to State. Unlike the *Sho-Me* case, Takings claims in this case could be against the State of Minnesota in addition to or instead of the electric coops. In other words, the bill attempts to shift liability and litigation costs to State of Minnesota and away from coops.
- Hornets Nest? If adequate caution is not exercised and due diligence performed on this issue, *Sho-Me* demonstrates that this issue has the potential to be very messy (class action lawsuit) and expensive. In other words, it has the potential to be anything but a reduction of a barrier to broadband deployment.



COOP POLE ATTACHMENT RATES – ANTI COMPETITIVE BARRIERS TO RURAL BROADBAND DEPLOYMENT

- All broadband providers that want to provide wireline broadband service to electric cooperative service areas need to attach facilities to poles owned by electric cooperatives.
- Electric cooperatives are exempt from Federal Communications Commission pole attachment rate regulations.
- Negotiating pole attachments with electric cooperatives can be extremely difficult, time consuming and expensive. See Table below.
- With many electric cooperatives entering the broadband business, unregulated pole attachment rates becomes more than a barrier to broadband deployment; it also becomes anticompetitive.
- If the Task Force decides to weigh in on broadband easements, it should also recommend the Legislature address pole attachment rate regulation.

Average Pole Attachment Rates by State (2017)					
State	Investor Owned (IO)	Coop	Muni	Coop/IO	Muni/IO
MN	6.02	13.89	9.06	2.31	1.51

Source: Michelle Connolly, *The Economic Impact of 224 Exemption of Municipal and Cooperative Poles*, July 12, 2019, Table 2.



THANK YOU