NRECA
America's Electric Cooperatives

Jim Matheson
Chief Executive Officer

July 2, 2018

The Honorable Orrin G. Hatch
Chairman
Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Ron Wyden
Ranking Member
Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Hatch and Ranking Member Wyden:

On behalf of America's Electric Cooperatives, I am writing to share our concerns about an unintended consequence of last year's tax reform legislation that will significantly impede the deployment of rural broadband and affect co-ops' storm recovery efforts. The nation's member-owned, not-for-profit electric co-ops constitute a unique sector of the electric utility industry – and face a unique set of challenges. Congress has recognized these differences, which is why tax treatment of electric cooperatives is different than the tax treatment of other sectors of the electric utility industry.

We are concerned that changes to Section 118 of the Internal Revenue Code brought about by H.R. 1 treat government grants as gross income which may threaten our members not-for-profit, tax-exempt status. Prior to the passage of H.R. 1, IRC Section 118 provided that the gross income of a corporation generally excludes any contribution to its capital. Under H.R. 1, the term "contribution to capital" has been modified and now excludes any contribution by any governmental entity or civic group.

As recipients of government grants for a variety of purposes (including broadband, disaster recovery, rural economic development, energy efficiency), we are concerned this change will cause such grants to be considered "nonmember income" for the purposes of the 85 percent member income requirement which could jeopardize a cooperative's not-for-profit tax status. For example, electric cooperatives often depend on FEMA's Public Assistance Program to help restore power to communities after a disaster strikes. Congress made electric co-ops eligible for FEMA reimbursements to manage storm response expenses, keep electricity prices down and ensure smooth recoveries from major natural disasters for not-for-profit, member-owned utilities. Without FEMA financial assistance, many co-op member-owners consumers living in disaster-stricken areas could face significantly higher electric rates.

Additionally, many electric cooperatives are actively bringing broadband to rural areas, and more are evaluating the subject. Congress recently provided the US Department of Agriculture's Rural Utilities Service with $600 million for FY2018 to provide loans and grants to entities working to bring high-speed internet to parts of the country being left behind in a digital divide. Many of our members are eager to take advantage of this funding, along with other federal and state sources, to bridge the digital divide, but the unintended consequence of the changes to Section 118 serves as a significant barrier.

A second and closely related issue is the need to update the tax code to clarify that income from leasing fiber capacity (dark fiber) is not considered as unrelated business income (UBI) for compliance with the 85 percent member income requirement. This change, if made, will be consistent with the existing treatment of rental income from pole attachments under the tax code. This update is increasingly important as electric cooperatives lay fiber for smart grid capabilities or internal communications or to build capacity for providing broadband to members or leasing to non-members.

Thank you for your leadership of the Committee and for your willingness to address the unique issues facing our industry. Please understand the critical and time-sensitive nature of this issue to electric cooperatives nationwide. We stand ready to work with you to pass legislation to resolve this unintended consequence. Please do not hesitate to contact me, or have your staff contact Paul Gutierrez in NRECA's Government Relations Department at paul.gutierrez@nreca.coop or 703-907-5806.

Sincerely,

Jim Matheson
CEO, NRECA