Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
	)	WC Docket No. 10-101
States that Have Certified That They Regulate Pole Attachments	)	

REPLY COMMENT OF THE CENTER FOR INDIVIDUAL FREEDOM, CONSUMER ACTION FOR A STRONG ECONOMY, CONSUMER CHOICE CENTER, AND INNOVATION ECONOMY ALLIANCE

I. INTRODUCTION AND SUMMARY

The Center for Individual Freedom, Consumer Action for a Strong Economy, Consumer Choice Center, and Innovation Economy Alliance commend the Wireline Competition Bureau ("Bureau") for its inquiry into pole attachment rules in the 23 states, and the District of Columbia (DC), that reverse preempted the FCC's framework.[1] [2] Pole attachment issues—including costs, delays, and disputes—have long served as a key barrier to broadband deployment.

In recent years, however, they have emerged as arguably the number one obstacle to building high-speed Internet in the United States. The timing of the FCC's inquiry is critical. Taxpayers have committed a historic $42 billion in the Broadband Equity, Access, and Deployment (BEAD) Program to connect every home and small business in the country. States

[1] The Center for Individual Freedom is a nonpartisan, nonprofit 501(c)(4) organization that has long advocated for free markets, constitutionally limited government, and accountability in the expenditure of taxpayer funds; Consumer Action for a Strong Economy is non-profit, non-partisan 501(c)(4) organization devoted to promoting consumer interests through the advancement of free-market principles and limited government; The Consumer Choice Center is an independent, non-partisan consumer advocacy group championing the benefits of freedom of choice, innovation, and abundance in everyday life; The mission of the Innovation Economy Institute and the Innovation Economy Alliance is to educate about and create a policy environment that understands the innovation ecosystem, that accepts and enables dynamic creation, invention, expression, and experimentation.

[2] Wireline Competition Bureau Reminds Reverse-Preemption States of Obligation to Effectively Regulate Pole Attachments and Seeks Comment on Need for Changes to the Commission's Certification Rules to Ensure Effective State Pole Attachment Regulation, WC Docket Nos. 17-84, 10-101, Public Notice, DA 26-579 (WCB rel. June 11, 2026) ("Public Notice").

have begun distributing the funds to providers, and fiber builds represent a significant portion of BEAD-funded projects. Those builds overwhelmingly rely on timely and cost-effective access to poles, which could make or break deployments in communities across the country.

The FCC and National Telecommunications and Information Administration (NTIA) have taken significant action to mitigate pole attachment issues within their jurisdictions. The FCC ruled in February that when a pole must be replaced to correct a preexisting violation, a new attacher owes only the incremental cost of the taller or stronger pole its attachment requires—not the full cost of the replacement.[3] And NTIA has required that electric cooperatives that own poles and participate in the BEAD program as subgrantees abide by FCC pole attachment rules.[4] These are critical steps, but FCC rules otherwise do not apply in the 24 jurisdictions that have opted out of the framework.

We are strong supporters of federalism. Congress gave states the right to opt out of the FCC's framework, recognizing that states have varying populations, topographies, and circumstances—and that state governments may be best positioned to govern the unique conditions within their borders regarding pole attachments. But that right came with a responsibility for states to certify to the Commission that they have clear, enforceable rules. Most of these certifications date back to the 1990s, well before the recent influx of federal funding and fiber builds. And the record in this proceeding and others demonstrates that pole attachment issues are festering in certified states.

Ultimately, this is an issue of good governance. When a certified state assumes that jurisdiction but fails to exercise it effectively—by regulating rates, terms, and conditions, and resolving complaints promptly—the result is a regulatory gap where pole owners operate without oversight. Consumers are left unprotected from the often-perverse incentives of a monopoly bottleneck, which can cause delays in deployments and waste of taxpayer dollars. Simply put, a certification without real regulation is not federalism. It is a governance vacuum.

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[3] Comcast Cable Communications, LLC v. Appalachian Power Co., Proceeding No. 25-330, Memorandum Opinion and Order, FCC 26-6 (rel. Feb. 5, 2026).

[4] NTIA, BEAD General Terms and Conditions § 13.D.1 (updated Jan. 2026) (requiring BEAD subgrantees that own utility poles not otherwise subject to state or federal pole attachment regulation to comply with the FCC's pole attachment rules).

The FCC is right to consider revisiting these certifications in light of the Communications Act's requirements that states have effective rules and regulations in place. The success of the BEAD program may depend on the outcome of this inquiry. For the reasons we explain below, the FCC should consider requiring updated and specific recertifications, specifying criteria for "effective" state regulation, and invalidating certifications that cannot be justified by the facts on the ground.

II. GOOD GOVERNANCE REQUIRES CLEAR RULES: REVERSE PREEMPTION IS A RESPONSIBILITY, NOT MERELY A RIGHT

Congress was clear in Section 224(c). States may opt out of federal pole attachment regulations, but only if they have "issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments" and act on complaints within specified deadlines.[5] Those certifications are made to the Commission, and the Commission is entitled to verify that they remain true. Reverse preemption exists to empower states to regulate within the confines of the Communications Act—not to eliminate oversight or otherwise fail to regulate effectively.

Verification is long overdue, particularly given the proliferation of pole attachment disputes across the country amid taxpayer-supported buildouts. Eighteen of the 23 certified states, along with the District of Columbia, filed their certifications before 1996 when Congress extended pole attachment protections to telecommunications carriers and established a mandatory right of access.[6] In the decades since, the Commission has repeatedly modernized its own framework to further streamline deployment, including establishing one-touch make-ready and self-help remedies, as well as the Rapid Broadband Assessment Team ("RBAT") process for expedited dispute resolution.[7] While certified states need not adopt identical rules, they should be expected to adopt, implement, and enforce rules that are appropriate for and effective in today's modern

[5] 47 U.S.C. § 224(c)(3); see also id. § 224(c)(2); 47 C.F.R. § 1.1405(b) (rebuttable presumption that a state is not regulating pole attachments absent the required certification and a publicly available regulatory methodology).

[6] Public Notice at 3 & n.13.

[7] See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018); Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, 38 FCC Rcd 12379 (2023); Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Orders on Reconsideration, 40 FCC Rcd 5395 (2025).

communications landscape. Otherwise, the result will be predictable: needless delays and excessive deployment costs that deny rural Americans timely access to high-speed Internet.

III. MONOPOLY INFRASTRUCTURE COMES WITH RULES OF THE ROAD

Utility poles are a natural monopoly. They occupy public rights-of-way, are maintained with the support of captive ratepayers, and offer no practical alternative for most wireline deployment. Control of essential utility infrastructure has always come with rules of the road, because the incentive problem is obvious. Without guardrails, a pole owner that controls the only path to the customer can extract inflated charges and impose onerous conditions with impunity. Pole owners are not a monolith. Some exercise their monopoly position responsibly. Others seek to leverage rural broadband programs to unjustly divert broadband funding into their own coffers, including by demanding that new attachers bear the cost of preexisting violations caused by deferred maintenance, the actions of previous attachers, or a combination of those factors.

Research cited by the Bureau estimates that BEAD-funded projects will touch roughly 3.95 million utility-owned poles across more than 2,000 electric utility service territories, with pole-related costs ranging from $534 million to $4.63 billion, and describes the current patchwork of pole attachment regulation as fragmented and inconsistent.[8] The Commission recently resolved a major pole attachment cost dispute on a timeline measured in months, setting an example for how states can and should resolve disputes expeditiously.[9] The question for the Commission, then, is whether the adequate guardrails Congress required as the *quid pro quo* of reverse preemption actually exist, and are actually enforced, in each certified state.

IV. POLE ATTACHMENT PROBLEMS IN CERTIFIED STATES

A. The Record Contains Substantial Evidence of Delay, Cost, and Regulatory Gaps

The record leaves no doubt that pole attachment problems in certified states are real, recurring, and impeding federally funded deployment. NTCA–The Rural Broadband Association reported that its members' pole access in reverse-preemption states has become "increasingly more time-consuming and expensive," with make-ready costs and completion timelines steadily rising

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[8] Public Notice at 3–4 & nn.4, 17–18 (citing Alex Karras & Michael Santorelli, Lingering Utility Pole Issues Could Raise Costs and Delay BEAD Buildout (May 12, 2026)); see also id. at 4 n.20 (citing Mera Analytics, BEAD Pole Analysis (May 11, 2026)).

[9] See Comcast v. Appalachian Power, FCC 26-6.

and state dispute-resolution processes falling short. We agree with the organization that the Commission should require specific details for recertification, as existing ones reveal little to nothing about how state processes actually operate.[10]

INCOMPAS likewise explained that reverse preemption "should not operate as a permanent shield" for jurisdictions that certified years ago but cannot demonstrate clear, public, enforceable rules today.[11]

B. The Arguments Against Commission Action Do Not Withstand Scrutiny

The National Rural Electric Cooperative Association calls this inquiry "a solution in search of a problem" and warns that revisiting state regimes mid-BEAD would generate confusion and delay.[12] Setting aside the unbelievable implication that pole attachment problems are imaginary, NRECA's argument is exactly backwards. The confusion and delay are not caused by the Commission's inquiry. They are caused by inconsistent and ineffective governance in some states—and practices by pole owners that would otherwise trigger enforcement by effective governance. Indeed, the FCC's inquiry is a potential antidote to these problems.

Attachers today confront two dozen divergent regimes. Variation among states is not an inherent problem—the statute allows it. But some states, as the record shows, require no access rules, timelines, or workable complaint processes at all. This, in the middle of a federally funded buildout where providers must meet hard deadlines. Verifying certifications should change little to nothing for any state whose rules are valid and effective. It would simply confirm that effectiveness. NRECA argues that every certified state provides a mechanism for filing a complaint. But a mailbox to receive complaints is hardly sufficient to comply with Congress's requirements in section 224(c).

The Washington Utilities and Transportation Commission, for its part, argues that no recertification is warranted for its state, citing nearly a decade without a formal complaint.[13] But

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[10] Comments of NTCA–The Rural Broadband Association, WC Docket Nos. 17-84, 10-101 (filed July 13, 2026).

[11] Comments of INCOMPAS, WC Docket Nos. 17-84, 10-101 (filed July 13, 2026).

[12] Comments of the National Rural Electric Cooperative Association, WC Docket Nos. 17-84, 10-101 (filed July 13, 2026).

[13] Comments of the Washington Utilities and Transportation Commission, WC Docket Nos. 17-84, 10-101 (filed July 13, 2026).

one state's clean record does not validate the certification of 22 others. While the state's empty complaint docket may be commendable, we note that Washington's lack of an accelerated dispute process may be a reason why providers aren't filing.

The Connecticut Public Utilities Regulatory Authority (PURA) argues that state commissions are best positioned to balance broadband deployment against utility operations, and that conditioning reverse preemption on criteria beyond the Act would render it meaningless.[14] We agree that states can be excellent pole attachment regulators, but PURA is wrong to suggest that any change in the status quo would constitute a conditioning of certification on criteria "beyond the Act." Rather, states are "best positioned" only when they comply with the statute, which requires effective rules, actual regulation of rates, terms and conditions, and timely complaint resolution. The FCC does not seek anything beyond the statute—it merely seeks to confirm that states are complying with section 224(c). Enforcing the bargain Congress struck does not second-guess state policy judgments. Enforcement is the necessary condition of state autonomy.

V. CERTIFIED-STATE EXAMPLES ILLUSTRATE THE REGULATORY GAP

A. Delaware

Delaware is a demonstrative case where reverse preemption substitutes federal regulation with a regime of little substance. As a general principle, Delaware law provides that pole attachment rates, terms, and conditions must be "just and reasonable" and may not be unduly preferential or unjustly discriminatory.[15] Yet, the state has implemented no make-ready timeframes and no accelerated dispute-resolution process. An attacher facing delay or obstruction in Delaware thus has none of the tools that give the federal framework its teeth. There is no shot clock, enforceable make-ready deadline, self-help remedy, or mechanism to expedite a hearing. On rates, Delaware has long employed a vague formula that many regard as too favorable to pole owners, which is difficult to square with the state's own standard that rates be neither preferential nor unjustly discriminatory. Fundamentally, Congress requires a comprehensive regime to govern pole attachments—not a standard with no manner to enforce it.

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[14] Comments of the Connecticut Public Utilities Regulatory Authority, WC Docket Nos. 17-84, 10-101 (filed July 13, 2026); see also Comments of the Public Utilities Commission of Ohio, WC Docket Nos. 17-84, 10-101 (filed July 13, 2026) (similar).

[15] 26 Del. C. §§ 201(a), 209(a), 303(a)

B. Massachusetts

Massachusetts suffers from similar problems. As the New England Connectivity and Telecommunications Association ("NECTA") explained this spring, Massachusetts' pole attachment regulations have not been substantively revised in more than forty years and contain no timelines for pole access.[16] Further, the state has no make-ready timeframes and no accelerated dispute-resolution process—gaps whose consequences GoNetspeed documented in the letter cited in the Commission's Public Notice on this proceeding.[17] While Massachusetts has opened a rulemaking to modernize its regime, it demonstrates why specific federal benchmarks matter. NECTA's analysis found that the proposed rules would constitute a significantly slower process than the federal baseline and impose unique requirements not found in other state frameworks. States should have flexibility as allowed by Congress, but FCC guardrails can ensure that states don't produce a regime that ends up materially slowing down deployment.

C. Illinois and New Jersey

Illinois and New Jersey present the most obvious justifications for this proceeding. The two states have certifications that come with essentially no governance. Illinois has adopted no statutes or regulations addressing pole attachment access rights and standards, no make-ready timeframes, and no accelerated dispute-resolution process. Similarly, New Jersey has adopted no access standards and no make-ready timeframes. These regulatory voids are essentially worst case scenarios for consumers, as attachers and pole owners alike have no rules to effectively govern a key bottleneck. The Commission should be prepared to conclude that a certification unsupported by any publicly available access rules cannot satisfy Congress's mandate.[18]

VI. RECOMMENDED COMMISSION ACTIONS

We urge the Commission, consistent with the questions posed in the Public Notice, to 1) require all reverse-preemption states to recertify with specificity on their rules and rate methodology, including whether pre-1996 certifications extend to telecommunications and

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[16] Comments of the New England Connectivity and Telecommunications Association, D.P.U. 26-10/D.T.C. 26-1, at 2, 10–12, 33–35 & Ex. A (Mass. D.P.U. & D.T.C. filed May 12, 2026) ("NECTA Comments").

[17] Public Notice at 4 n.19 (citing Letter from Maria Browne, Counsel to GoNetspeed, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-101, at 3 (filed Oct. 25, 2024)).

[18] 47 U.S.C. § 224(c)(3)(A); see also 47 C.F.R. § 1.1405(b).

broadband attachers; 2) articulate minimum standards of "effective rules and regulations" under the statute, including on enforceable timelines, cost transparency, and dispute resolution; and 3) where a state cannot demonstrate compliance, treat the certification as invalid and exercise federal authority as a backstop until the state can implement an effective governance structure. As BEAD construction and pole negotiations are underway, we encourage the Commission to complete this review expeditiously.

VII. CONCLUSION

Clear rules benefit everyone—attachers, consumers, taxpayers, and pole owners and states alike. A state or pole owner experiencing no problems should not be troubled by this proceeding and nothing to lose from transparency. The record is clear that some states with decades-old certifications are experiencing significant pole attachment issues. Therefore, a refresh is well justified. Congress conditioned reverse preemption on real regulation, and the Commission should simply ensure that condition is met. The success of the BEAD program, and connectivity for rural Americans, depend on effective governance of utility poles.

Respectfully submitted,

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