

# Preserving the Municipal Exemption from Federal Pole Attachment Regulations

- The American Public Power Association (APPA) strongly supports the goal of ensuring every American has access to broadband service.
- Public power utilities have long been explicitly exempted from federal pole attachment regulations and APPA opposes any efforts by Congress or the Federal Communications Commission (FCC or Commission) to weaken or eliminate this exemption.
- There is no evidence that local regulation of public power pole attachments is a barrier to broadband expansion.
- One-size-fits-all pole attachment regulations or model rules are unworkable for public power utilities due to their diversity in size, operation, and governance structures.

## Background

The term pole attachment refers to the process by which communications companies can collocate communications infrastructure on existing electric utility poles. This reduces the number of poles that must be built to accommodate utility services while reducing costs to users of both services by allowing providers to share costs. Rules governing pole attachments must balance the desire to maximize value for users of both electric and communications services with concerns unique to electric utility poles, such as safety and reliability.

In 1978, Congress passed the Pole Attachment Act, which added section 224 to the Communications Act of 1934, to require the FCC to establish subsidized rates for pole attachments for the then-new cable industry. Under the law, public power utilities and rural electric cooperatives were exempted from this requirement “because the pole attachment rates charged by municipally owned and cooperative utilities [were] already subject to a decision-making process based upon constituent needs and interests.” This exemption continued through multiple telecommunications law reform efforts, including the enactment of the Telecommunications Act of 1996, because Congress maintained that the existing process is appropriate and adequate. Attachment rates for public power utilities are usually determined at the local level. If a utility is seeking excessive pole attachment rates, the affected attacher has the remedy of challenging the rate at the local level. In a few states, public power attachment rates are governed by state law.

Cable and telecommunications organizations have been working to convince the FCC and Congress that the municipal exemption from federal pole attachment rates and regulations should be eliminated. Without evidence, they claim that local control over rates and regulations is a major barrier to broadband deployment.

## Regulatory Action

Several times since 2010, the FCC has recommended that Congress eliminate the exemption public power utilities and rural electric cooperatives have from FCC regulation of pole attachments under the guise of facilitating broadband deployment. Since 2016, the FCC has opened numerous dockets that reflect its desire to explicitly or implicitly regulate public power utility poles, even though the Commission is barred from doing so under section 224 of the Communications Act. APPA submitted comments in response to each proceeding, highlighting the clear statutory municipal exemption from federal regulation of pole attachments in section 224 and explaining that there is no evidence that the exemption is a barrier to broadband deployment. The FCC moved forward with orders

throughout 2017 and 2018. In those orders, the Commission excluded capital costs from pole attachment rates, set “shot clocks” on the time a utility must respond to pole attachment complaints, and excluded certain utility pole replacements from historic preservation rules.

In a September 2018 Declaratory Ruling and Third Report and Order (Small Cell R&O), the FCC preempted state and local laws and agreements, including those related to pole attachments for the installation of small cell wireless facilities, to “remove regulatory barriers that would unlawfully inhibit the deployment of infrastructure necessary to support these new [wireless] services.” The Small Cell R&O imposed rate and access regulations on public power utilities’ pole attachments for wireless devices despite the clear language in section 224 that public power utility poles are exempt from FCC regulation.

APPA challenged the Commission’s Small Cell R&O in federal court. The U.S. Court of Appeals for the Ninth Circuit upheld the FCC’s R&O, stating the Commission could use section 253 to broadly prevent local governments from creating barriers to wireless small cell deployment, including access to public power utility poles. Section 253 seeks to promote competition for telecommunications services by barring state and local barriers to entry and that also governs state and local right-of-way management. While APPA views the ruling as a further attempt to weaken the section 224 exemption, the court continued to uphold that the FCC could not use section 253 to regulate the specific rates, terms, or conditions of public power pole attachments. Notably, the Small Cell R&O and the Ninth Circuit’s decision are on their face limited to wireless pole attachments.

In December 2023, the Commission adopted a Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking (2023 R&O), establishing a “Rapid Broadband Assessment Team,” an intra-agency team charged with prioritizing and expediting resolution of disputes that impede or delay broadband deployment. It also requires utilities to provide pole attachment applicants with information about the status of their utility poles to aid communications providers in planning their build outs. The Commission also expanded upon its prior determination that a utility may not charge an attaching entity the costs of pole replacement if it is not “necessitated solely” by the attacher by clarifying and expanding its definition of a “red-tagged” pole. Finally, the FCC sought comments on the proper time frames for utilities to perform make-ready on large pole attachment orders, and whether to further revise the ability of attaching entities to engage in “self-help” when a utility fails to meet FCC deadlines. The FCC issued the 2023 R&O final rule in July 2024, defining information collection requirements for pole attachment rules over a three-year period.

In 2025, the FCC issued a Notice of Inquiry (NOI) and Further Notice of Proposed Rulemaking (FNPRM) seeking additional changes to section 253 of the Communications Act for the deployment of wireless communications equipment. The FCC continues to erroneously believe that public power utilities are a barrier to broadband deployment and is seeking avenues for broadband service providers to challenge permitting practices and pole attachment rates under the threat of FCC preemption. In November 2025, APPA submitted comments on the FCC’s NOI regarding the deployment of wireless equipment under section 253, reiterating the exemption under section 224 from federal government regulation of public power utility pole attachments. The comments further stressed that public power utilities operate as market competitors, not in a regulatory capacity, when handling pole attachment applications. Safety and engineering concerns remain the only reasons that a public power utility would decline a pole attachment request.

## Congressional Action

In January 2025, Representative Morgan Griffith (R-VA) introduced H.R. 278, the Barriers and Regulatory Obstacles Avoids Deployment of Broadband Access and Needs Deregulatory Leadership (BROADBAND Leadership) Act. APPA opposes this legislation as it would effectively remove public power utilities’ long-standing exemption from FCC oversight of pole attachments. APPA members support broadband deployment in their communities and have no incentive to prevent their customers from accessing broadband infrastructure.

In September 2025, the House Energy & Commerce's Subcommittee on Communications & Technology marked up H.R. 278 as part of a slate of broadband-related permitting bills. During the markup, H.R. 278 was incorporated into H.R. 2289, the Proportional Reviews for Broadband Deployment Act, in section 102. The legislation was approved along party lines by the full committee in December 2025.

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The American Public Power Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government and protect the interests of the more than 55 million people that public power utilities serve and the 100,000 people they employ.

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