

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 continues to submit 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. Nevertheless, the FCC moved forward with orders throughout 2017 and 2018 that 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 its 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 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, threatening 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 in a proprietary capacity, 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. In December 2025, APPA submitted reply comments in the docket reiterating that section 224 explicitly exempts the FCC from regulating municipal pole attachments and that access to public power poles should not be conflated with access to a right-of-way.

In June 2026, the FCC issued a Notice of Proposed Rulemaking (NPRM) seeking comment on whether its proposed cost-based fee standard should apply to pole attachments on government-owned poles and conduit, noting the FCC’s opinion that current fees may be excessive and must comply with section 253’s requirements for fair, reasonable, and nondiscriminatory compensation. The Commission has tentatively concluded that the same cost-based framework that applies to investor-owned utilities should also apply to government-owned infrastructure in public rights-of-way. The NPRM also includes requests for data on actual costs and input on whether adjusted safe harbor fee levels are needed to account for factors like engineering reviews, inspections, and geographic variability. APPA will file comments on the NPRM that reiterate the section 224 exemption and Congress’ intent for local control of pole attachments.

Congressional Action

In January 2025, Representative Morgan Griffith (R-VA) introduced H.R. 278, the BROADBAND Leadership Act, which APPA opposes because it would effectively remove public power utilities' long-standing exemption from FCC oversight of pole attachments. APPA maintains that its members support broadband deployment in their communities and have no incentive to block customer access to broadband infrastructure.

In September 2025, H.R. 278 was incorporated as section 102 of H.R. 2289, the American Broadband Deployment Act, and the full House Energy & Commerce Committee approved the legislation along party lines in December 2025. To address concerns raised by public power utilities, the bill's authors agreed to an amendment that reinforces the section 224 municipal exemption, effectively making section 102 inapplicable to public power poles, ducts, and conduit. Although the amended bill was expected to receive House floor consideration in April 2026, it was pulled over unrelated concerns, and its prospects for consideration before the end of the 119th Congress remain unclear.

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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.