



Perspectives from FSF Scholars
July 21, 2026
Vol. 21, No. 30

Continuing to Improve the Pole Attachment Dispute Process

by

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I. Introduction and Summary

Momentum for implementing permitting reform to remove obstacles to broadband deployment has risen over the last year or so. The federal government continues to make major investments in bringing broadband to everyone. The largest part of this commitment is the \$42.45 billion Broadband Equity and Access Deployment Program (BEAD). Almost all BEAD-funded projects will need to obtain various forms of permissions from state and local agencies for access and rights-of-way. Studies have shown that imposing unreasonable costs and/or delays can have a significant negative effect on deployments.¹

Although most of the attention has gone to parts of the permitting process affecting other facilities, access to poles is also important, especially if the project is installing aerial equipment. Unfortunately, pole owners sometimes use the occasion to impose unwarranted conditions which reduce providers' ability and incentive to expand broadband deployment. Because BEAD projects face a statutory deadline for completing their work, time delays are especially threatening. They also impede non-BEAD broadband projects as well.

¹ Joseph V. Kennedy, "Measuring the Value of Delayed Broadband Deployment: Why the FCC's Focus on Permit Reform Matters," *Perspectives from FSF Scholars*, Vol. 21, No. 7, (February 9, 2026), https://freestatefoundation.org/wp-content/uploads/2026/02/Permitting-Delays-Perspectives.Final_.021026.pdf.

The FCC is attempting to address this situation by issuing a notice of proposed rulemaking to ensure that states that self-regulate pole attachments meet minimum standards. The Commission has also sped up its adjudication process, deciding one dispute within 60 days of receiving it. However, several months later the two parties continue to battle, making the Commission's ability to enforce its own orders crucial.

II. Background

A recent report and follow-on analysis estimates that BEAD projects will touch an estimated 4 million utility poles over the next several years.² About 40 percent of BEAD aerial fiber will be deployed across electric cooperative territories. Although data is scarce, the authors ventured that pole-related costs could range from \$534 million to \$4.63 billion.

The report accurately notes that regulation of poles is “scattershot.” Section 224 of the Communications Act gives the FCC the authority to regulate the rates, terms, and conditions of pole attachments, preempting any efforts on the state and local level.³ The statute charges the Commission with ensuring that such provisions are just and reasonable and with adopting procedures to resolve complaints.

However, a state that wants to regulate on its own is allowed to “reverse-preempt” federal authority. To do so it must certify to the Commission that it regulates the rates, terms, and conditions of pole attachments and that it considers the interests of the subscribers of the services offered via such attachment, as well as the interests of the consumers of the utility services. The state must also show that it has issued effective rules implementing its authority and takes final action within 360 days after receiving a complaint. At present 23 states and the District of Columbia have reverse-preempted the FCC.⁴

III. Regulatory Reform

The Commission's effort to address unwarranted delays regarding pole attachments has taken two forms. The first is to update rules governing attachment to poles. Last year it announced new rules for poles in the states that it regulates.⁵ More recently, it issued a request for comments on options it could take to “make state reverse-preemption pole attachment regulations more transparent and effective and to better ensure state compliance with the statute and the Commission's regulations setting forth the requirements for effective reverse preemption to best

² Alex Karras and Michael Santorelli, “Lingering Utility Pole Issues Could Raise Costs and Delay BEAD Buildout,” Broadband Expanded, May 12, 2026, https://broadbandexpanded.com/posts/beadpoles?utm_source=substack&utm_medium=email; BEAD Pole Analysis, Broadband Expanded, May 11, 2026, <https://broadbandexpanded.com/files/data/bead/BEAD%20Pole%20Analysis%20-%20May%202026.pdf>.

³ 47 U.S. Code, §224, <https://www.law.cornell.edu/uscode/text/47/224>.

⁴ Comments of the NCTA – The Internet & Television Association, FCC Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment and States That Have Certified That They Regulate Pole Attachments, WC Docket Nos. 17-84 and 10-101, July 13, 2026, https://www.fcc.gov/ecfs/document/26110014734/1?utm_source=substack&utm_medium=email.

⁵ FCC Aims to Remove Barriers to Broadband Deployment and Investment, Docket No. 17-84, Released July 25, 2025, https://www.fcc.gov/ecfs/document/26110014734/1?utm_source=substack&utm_medium=email.

address the urgency and potential for broadband deployment brought about by government and private funding opportunities.”⁶ The motive seems to be to encourage states to adopt requirements that are similar to those the FCC imposes in states that do not reverse-preempt. The request has generated a large number of diverse opinions.

Some of the comments seem to miss the point. For instance, the Washington Utilities and Transportation Commission argued that no action should affect it because it adequately regulates pole attachments and has not faced a complaint in the last decade.⁷ However, the rationale for more focused and transparent regulation is not that some states are doing well. It is that other states are imposing unwarranted costs and/or delays that jeopardize deployment in their states.

IV. The Adjudication Process

FCC’s second effort is a reform of its dispute resolution process. It first used this process in a recent adjudication of a pole attachment dispute involving Comcast and the Appalachian Power Company.⁸ Comcast argued that Appalachian Power was charging it for pole damage caused by third parties. The case is significant because it used new powers previously proposed by the Free State Foundation scholars. These included an accelerated docket process meant to speed up decisions. It also used a Rapid Broadband Assessment Team of FCC personnel to expedite the resolution of pole attachment disputes. The Commission was able to render a decision within 60 days of the filing of Comcast’s complaint, ruling unanimously that Appalachian Power could only charge Comcast for the incremental cost of its project.

Unfortunately, over five months later the parties are still at odds. Comcast recently filed its third complaint to the Commission, arguing that Appalachian Power is not abiding by the FCC’s decision.⁹ Appalachian Power has made similar claims. Unless the Commission can enforce its decisions in a timelier manner, shortening the decision process may not matter too much.

V. Conclusion

Pole attachment rules are important to broadband deployment. The Commission should be complimented for trying to find a balance between state authority and the need for reverse-preemption to be more than just a neglected issue. At the same time, it should continue focusing on improving its processes for adjudicating and enforcing pole attachment disputes before it.

⁶ WCB Reminds Reverse-Preemption States of Pole Attachment Obligations, Docket Nos. 17-84 and 10-101 (released on June 11, 2026), <https://www.fcc.gov/document/wcb-reminds-reverse-preemption-states-pole-attachment-obligations>.

⁷ Comments of the Washington Utilities and Transportation Commission, FCC Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment and States That Have Certified That They Regulate Pole Attachments, WC Docket Nos. 17-84 and 10-101, July 9, 2026, https://www.fcc.gov/ecfs/document/26110007684/1?utm_source=substack&utm_medium=email.

⁸ FCC, Rapid Broadband Assessment Team Resolves Pole Attachment Complaint, Released on February 4, 2026, <https://www.fcc.gov/document/rapid-broadband-assessment-team-resolves-pole-attachment-complaint>.

⁹ Comcast Cable Communications, LLC, Pole Attachment Complaint, July 27, 2026. <https://www.fcc.gov/ecfs/document/26109998224/1?ref=broadbandbreakfast.com>.

Making the pole attachment process more efficient will have a significant positive effect on the ability to complete broadband projects in a timely manner.

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