

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF INCOMPAS

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I. Introduction and Summary

INCOMPAS submits these comments in response to the Wireline Competition Bureau’s June 11, 2026 Public Notice, which reminds reverse-preemption states of their obligations under Section 224(c) of the Communications Act and seeks comment on options to make state pole attachment regulation more transparent and effective.¹

INCOMPAS represents a broad coalition of competitive communications providers, broadband builders, and technology innovators committed to expanding access, AI-supporting infrastructure, innovation, and competition in American communications markets. Our members are at the forefront of large-scale network builds that require access to utility poles and to public rights-of-way managed or controlled by state and local governments, telecommunications providers, and utilities. Pole access is a foundational input for broadband deployment. As the nation works to deploy the \$42.45 billion Broadband Equity, Access, and Deployment (“BEAD”) Program and substantial private capital, clear, enforceable pole attachment rules in reverse-preemption jurisdictions are not a procedural technicality; they are a prerequisite for deployment success.²

¹ *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, at 1 (WCB rel. June 11, 2026) (“Public Notice”).

² Public Notice at 1; National Telecommunications and Information Administration (NTIA), *Broadband Equity, Access, and Deployment Program*, BroadbandUSA (last visited July 8, 2026).

Several reverse-preemption jurisdictions have meaningful, up-to-date, or actively improving frameworks. However, reverse preemption should not operate as a permanent shield where a jurisdiction filed a certification years ago but cannot demonstrate that it currently provides clear, public, enforceable rules governing the pole attachment matters at issue.

Despite the obligations of all reverse preemption states, network builders face recurring concerns: prolonged survey and make-ready timelines; substantial and sometimes unpredictable pole-related costs; disputes over pole replacement and other make-ready costs; and gaps in complaint procedures or regulatory coverage. These problems can threaten the schedules and economics of federally funded and private broadband deployments.³

INCOMPAS recommends the Commission take the following measured, record-building steps:

- Require updated, specific certifications from the 23 states and the District of Columbia that have certified reverse preemption, including current authority, covered entities and facilities, and publicly available rules.⁴
- Require jurisdictions whose certifications predate 1996 to demonstrate current authority over attachments by providers of telecommunications service and modern broadband-related attachers.
- Collect operational information on timelines, rates, and make-ready costs, complaint procedures, coverage gaps, and adoption of or comparability to recent FCC pole attachment reforms.
- Create a public, state-by-state certification database and an attacher review process to ensure that covered attachers have an effective forum for deployment-threatening disputes.

II. Effective Pole Attachment Regulation Is Essential to Broadband and BEAD Deployment

The Public Notice recognizes that the pole attachment process is a key factor in ensuring that Americans benefit from federal broadband investments, including BEAD. Per NTIA guidelines, BEAD subgrantees receiving network-deployment funds generally must deploy the planned broadband network and begin providing service to each customer that desires service within the project area no later than four years after receiving the subgrant, subject to limited extension authority.⁵ Those timelines are directly affected by pole access. Analysis cited by the Bureau estimates that BEAD-funded projects could touch approximately 3.95 million utility-

³ See Public Notice at 3-4 & nn.16-20; Letter from Maria Browne, Counsel to GoNetspeed, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-101, at 3 (filed Oct. 25, 2024) (“GoNetspeed Oct 2024 *ex parte* Letter”); Mera Analytics, BEAD Pole Analysis, at 1, 3-4 (May 11, 2026).

⁴ Public Notice at 1-2.

⁵ NTIA, Notice of Funding Opportunity, Broadband Equity, Access, and Deployment Program, at 18, 43, 65-66 (May 13, 2022) (“BEAD NOFO”).

owned poles across more than 2,000 electric utility service territories, based on approximately 188,287 planned aerial fiber route-miles, and that pole-related costs could range, under one illustrative methodology, from approximately \$534 million to \$4.63 billion.⁶ These estimates should be treated as illustrative rather than exact engineering forecasts, but they underscore the magnitude of deployment risk when pole access rules are incomplete, unclear, or unenforceable.

The current deployment cycle is distinct from past pole attachment scenarios. Federal and state broadband funding programs, combined with private network investment, are producing large-volume deployments that require predictable, scalable, and enforceable pole-access rules. Generally, attachers in FCC-jurisdiction states benefit from the Commission's updated pole attachment rules, including the 2018 One Touch Make Ready ("OTMR") and self-help reforms; the 2023 Rapid Broadband Assessment Team ("RBAT"), pole-inspection-report disclosure, easement-information, and very-large-order reforms and clarifications; and the 2025 large-order timelines, missed-deadline notices, estimate self-help, application-limit prohibition, and contractor-approval rules, which became effective May 7, 2026. Covered attachers in reverse-preemption jurisdictions may not benefit from these protections unless the state has adopted comparable rules. That gap is a deployment risk the Commission can and should address.⁷

The record already contains illustrative evidence of deployment challenges that can arise under weaker state frameworks. GoNetspeed reported in an October 2024 *ex parte* letter that, in Massachusetts, the pre-construction survey process could take close to a year because pole owners required two surveys and a reconciliation process before issuing make-ready estimates, which could take approximately four years. GoNetspeed contrasted that experience with a 90 day-to 6-month process in states it characterized as effectively regulated. Massachusetts's total BEAD allocation is \$147,422,464.39.⁸

Michigan underscores the practical uncertainty that can arise in a pre-1996 certification state that has not adopted clear, updated, comprehensive pole-attachment rules. As Crown Castle Fiber explained in comments before the Michigan Public Service Commission, the Commission's prior interpretations of MCL 460.6g created uncertainty over whether certain

⁶ Public Notice at 4 & n.17; Mera Analytics, BEAD Pole Analysis, at 1, 3-4 (May 11, 2026).

⁷ See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Orders on Reconsideration, FCC 25-38, paras. 1-2, 13-57 (rel. July 25, 2025) ("2025 Pole Attachment Order"); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, 38 FCC Rcd 12379, 12380-81, paras. 2-3 (2023); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7706, para. 1 (2018); *Wireline Competition Bureau Announces Effective Date of Revised Pole Attachment Rules*, WC Docket No. 17-84, 91 Fed. Reg. 24,731 (May 7, 2026); 47 C.F.R. §§ 1.1411-1.1412.

⁸ GoNetspeed Oct 2024 *ex parte* Letter.

telecommunications providers that own poles or conduit are treated as “attaching parties” subject to state pole-attachment jurisdiction. That uncertainty can result in disparate treatment among similarly situated attachers, including the possibility that different attachments on the same pole may be subject to different state or federal rules. In practice, such ambiguity undermines regulatory certainty, complicates pole-owner compliance, increases the risk of delays and unnecessary costs, and can impair providers' ability to deploy the facilities needed to serve consumers.⁹

These are provider-reported experiences that show why the Commission’s factual inquiry matters: where rules are absent, unclear, or unenforceable, deployment timelines and costs can diverge significantly from those in jurisdictions with clearer frameworks.¹⁰

III. State-Specific Context Supports a Differentiated FCC Response

The Public Notice recognizes that reverse-preemption jurisdictions vary in whom and what they regulate and in the specificity of their rules. Some states may have adopted or incorporated substantial portions of the FCC’s pole attachment regime; others may be updating their frameworks; and still others may present unresolved questions concerning covered attachers, covered pole owners, rate methodology, enforceable timelines, or complaint procedures. The Commission should develop a state-by-state record rather than presume uniformity.¹¹

Because this Public Notice is an initial step in developing the record, INCOMPAS does not ask the Commission to make final determinations about individual state frameworks on the present record. Rather, if the Commission gathers sufficient evidence to move forward with a Notice of Proposed Rulemaking, it should consider a differentiated approach that recognizes the significant variation among reverse-preemption jurisdictions. For jurisdictions with stronger frameworks, the Commission could seek confirmation that recent FCC reforms have been adopted or that comparable protections and current complaint procedures are in place. For jurisdictions with active reform proceedings, the Commission could seek status reports and expected completion dates. For jurisdictions where the current framework is unclear, the Commission could seek detailed recertification information and production of current rule text. And for jurisdictions where the record identifies significant jurisdictional or coverage gaps, the

⁹ See Comments of Crown Castle Fiber LLC, *In the Matter of the Petition of ExteNet Systems, Inc. to Initiate a Proceeding for the Commission to Issue and Make Effective Rules and Regulations Implementing Michigan’s Regulatory Authority over Wireless Pole Attachments*, Case No. U-20980, at 3–8, 11–13, 15–16, Mich. Pub. Serv. Comm’n (filed June 10, 2021) (“Crown Castle Fiber Comments”); *In the Matter of the Petition of ExteNet Systems, Inc. to Initiate a Proceeding for the Commission to Issue and Make Effective Rules and Regulations Implementing Michigan’s Regulatory Authority over Wireless Pole Attachments*, Case No. U-20980, Order at 19–20, Mich. Pub. Serv. Comm’n (Sept. 9, 2021) (“MPSC U-20980 Order”).

¹⁰ GoNetspeed Oct 2024 *ex parte* Letter; Public Notice at 4 & n.19; NTIA, Public Resources Related to BEAD Plans and Milestones, Massachusetts (last visited July 8, 2026) (listing a total BEAD allocation of \$147,422,464.39).

¹¹ Public Notice at 2.

Commission could seek further comment on whether additional guidance is needed to ensure that covered attachers are not left without an effective forum for resolving deployment-threatening disputes, to the extent that Section 224 otherwise provides the Commission with jurisdiction.

This record-based approach would avoid treating all reverse-preemption jurisdictions alike while allowing the Commission, through a subsequent NPRM, to determine whether changes to its certification rules or additional guidance are needed to ensure that reverse preemption reflects actual, effective state regulation.

IV. The FCC Should Seek Updated, Specific Information from All Reverse-Preemption Jurisdictions

The Public Notice asks whether reverse-preemption states should recertify and include greater specificity about who and what they regulate so that attachers, pole owners, states, and the Commission have a clearer understanding of the boundaries of state regulation.¹² INCOMPAS encourages the FCC to move forward with this inquiry. The current certification record does not give attachers, pole owners, states, or the Commission sufficient clarity about who and what each jurisdiction regulates. The FCC should require each reverse-preemption jurisdiction to submit an updated certification identifying the entities and facilities it regulates, the specific pole-attachment matters covered by its rules, the statutes or rules that provide binding authority, and whether the jurisdiction has adopted or provides comparable protections to recent FCC pole-attachment reforms. The operational details of that show are addressed below.¹³

V. Pre-1996 Certifications Warrant an Updated Showing for Telecommunications and Modern Broadband Attachments

Eighteen states and the District of Columbia filed their initial reverse-preemption certifications before 1996, when the federal pole attachment framework applied only to cable television systems. Congress extended pole attachment protections to providers of telecommunications service through the Telecommunications Act of 1996, but the Commission has not issued guidance on whether pre-1996 certifications are sufficient to preserve reverse preemption for those attachments.¹⁴

INCOMPAS urges the Commission to adopt a measured approach. The Commission should not automatically invalidate every pre-1996 certification; some jurisdictions may have subsequently updated their statutes, rules, orders, or regulatory practices to cover attachments by providers of telecommunications service and other broadband-related attachments covered by state law. But the Commission should require each pre-1996 certification jurisdiction to demonstrate current authority and actual regulation for the categories it claims. Specifically, each jurisdiction should identify: (1) the date and scope of its original certification; (2) whether the

¹² Public Notice at 4-5.

¹³ 47 U.S.C. § 224(a)(1), (4); 47 C.F.R. § 1.1402(a)-(b).

¹⁴ Public Notice at 3 & n.13; 47 U.S.C. § 224(a)(4); Telecommunications Act of 1996, Pub. L. No. 104-104, § 703, 110 Stat. 56, 149 (1996).

original certification applied only to cable television attachments; (3) whether the jurisdiction has since amended its laws, rules, or orders to cover attachments by providers of telecommunications service and any additional broadband attachers covered by state law; and (4) whether a current complaint process is available to those attachers. A certification that does not demonstrate current authority and actual regulation over the matters it claims should not, without further review, continue to operate as conclusive proof that Commission jurisdiction is unavailable.

BEAD deployments are broadband infrastructure projects, and many BEAD-funded attachments will be made by cable systems, broadband providers, or providers of telecommunications service. Some projects may also involve attachers or pole owners outside the direct reach of Section 224. Accordingly, a pre-1996 certification addressing only cable television attachments does not, standing alone, establish that state law currently regulates every category of attachment implicated by a modern broadband deployment.

NTIA's BEAD award conditions impose separate, project-related obligations that reinforce the need for regulatory clarity. NTIA requires Eligible Entities to apply BEAD General Terms and Conditions section 13.D.1 through their subgrant agreements; BEAD subgrantees thereby agree that poles they own within the Eligible Entity's jurisdiction that are not already subject to state or FCC pole attachment regulation will be governed by FCC rules through the federal-interest period. NTIA also requires grantee permitting processes, Permitting Roundtables, and reporting concerning unresolved subgrantee complaints and delays.¹⁵ These conditions do not expand the Commission's statutory jurisdiction or displace a reverse-preemption state's independent obligations under Section 224(c). That provision requires a state to issue and make effective implementing rules, regulate rates, terms, and conditions, consider consumer interests, and provide for timely final action on individual complaints.¹⁶ The Commission should therefore require updated, detailed certifications, consider BEAD pole-access complaint and delay data, and determine, through appropriate procedures, whether a certification remains effective for each claimed area of state regulation.¹⁷

As suggested in the Public Notice, INCOMPAS believes the Commission should not treat state certifications as immune from review. Section 1.1405 currently provides that a suitable certification is conclusive proof of the Commission's lack of jurisdiction and requires dismissal of covered complaints. Because that consequence can deprive attachers of access to the Commission's complaint process, the Commission reasonably can examine whether a certification remains suitable and accurate. Section 1.1405(f) separately provides that jurisdiction reverts to the Commission for an individual matter if the state does not take final action within 180 days, or within a state-prescribed period that may not extend beyond 360 days.¹⁸

¹⁵ NTIA, Frequently Asked Questions and Answers, Broadband Equity, Access, and Deployment (BEAD) Program, Version 20, FAQs 6.4-6.9, at 45-46 (Apr. 2, 2026).

¹⁶ 47 U.S.C. § 224(c)(2)-(3); 47 C.F.R. § 1.1405(b), (f).

¹⁷ Public Notice at 2-5.

¹⁸ 47 C.F.R. § 1.1405(a), (f).

Where an updated record suggests that a certification is incomplete or deficient, the Commission should request a corrective filing with a defined period for supplementation and, through notice-and-comment or another legally appropriate process, determine whether the certification remains effective for the matters claimed. Any exercise of Commission jurisdiction should be limited to matters, attachers, and pole owners within Section 224's scope. This approach is particularly appropriate where a jurisdiction regulates some, but not all, categories of attachments or pole owners.

INCOMPAS suggests the Commission seek further comment on how Section 224(c) and Section 1.1405 apply where a state certification exists, but the state's rules do not appear to cover particular categories of disputes, attachers, pole owners, or remedies. A further record would help the Commission determine whether additional guidance is needed to prevent regulatory gaps that could leave attachers without a meaningful state or federal forum for resolving deployment-threatening pole attachment disputes, to the extent that Section 224 otherwise supplies the Commission with jurisdiction.¹⁹

VI. The FCC Should Seek Additional Operational Information to Evaluate State Frameworks and Determine Next Steps

The Bureau's Public Notice asks the right high-level questions: whether states should recertify with greater specificity; whether pre-1996 certifications remain adequate for telecommunications and broadband-related attachments; whether the Commission has a duty to review state certifications for adequacy; and what action the Commission should consider if a state's regulation proves incomplete.²⁰ The answers depend on facts the Commission does not yet have in a systematic, state-by-state form.

Whether a jurisdiction's framework is adequate is not an abstract legal question. It turns on whether covered attachers actually experience clear timelines, enforceable rights, transparent cost allocation, and meaningful recourse when something goes wrong. Evidence of prolonged timelines, unexplained differences between estimated and final charges, complaint processes that offer no timely relief, or regulatory structures so fragmented that no agency can act decisively would warrant further inquiry because such conditions can raise project costs and delay service delivery while deployment windows close.

INCOMPAS recommends the FCC seek the following operational information directly from each reverse-preemption jurisdiction:

A. Foundational Questions for All Reverse-Preemption Jurisdictions

Jurisdictional Scope. Does the jurisdiction's pole attachment authority expressly cover cable systems, providers of telecommunications service, including competitive local exchange carriers, broadband providers, and wireless and small-cell attachers? Does the

¹⁹ See Crown Castle Fiber Comments at 3 arguing that "the [Michigan] Commission arguably loses its jurisdiction over all pole attachments under Section 224 because it does not regulate all pole attachments, as prescribed by the federal statute."

²⁰ Public Notice at 4-5.

jurisdiction cover poles owned by entities within the federal definition of “utility,” and does state law separately cover municipal utilities, electric cooperatives, public utility districts, or other government-owned entities? For any excluded category, what regulatory forum is available to attachers?²¹

Rate Regulation. Does the jurisdiction regulate pole attachment rates? If yes, what specific rate methodology applies, and where is it publicly available? Does the jurisdiction require itemized make-ready cost estimates? Does it impose any cap, reconciliation process, or reasonableness standard for differences between estimated and final make-ready charges? Does it regulate the allocation of pole replacement costs?

Access and Timelines. Does the jurisdiction impose binding timelines for acknowledging an application, completing a survey, providing a make-ready estimate, and completing make-ready work? Does it have a process for large-volume or batched applications? Does it allow attachers to use qualified contractors to perform self-help or OTMR work?

Complaint and Enforcement. What is the complaint process for pole attachment disputes? What agency adjudicates disputes, under what procedural rules, and within what typical timeframe? Can the agency impose penalties or order expedited compliance? Can a complaining attacher continue make-ready and attachment activities while a dispute is pending?

FCC Reform Adoption. Has the jurisdiction adopted, incorporated by reference, or declined to adopt the Commission’s recent pole attachment reforms? For each reform declined, how does the jurisdiction’s alternative approach provide equivalent protection?

B. Questions for Pre-1996 Certification Jurisdictions

For pre-1996 certification jurisdictions, the Commission should require the additional showing described above in Section IV, including identification of the original certification’s scope, any post-1996 statutory, regulatory, or decisional updates, and the availability of a current complaint process for providers of telecommunications service and modern broadband-related attachers.

C. Questions for Dual-Agency and Divided-Jurisdiction Frameworks

In some jurisdictions, the relevant problem is not the total absence of rules, but structural features which prevent an effective regulatory response. INCOMPAS recommends the Commission ask the states which agency has primary jurisdiction over access disputes, which agency has primary jurisdiction over rate disputes, whether state rulemaking requires joint action, whether ex parte or adjudicatory constraints limit rule updates during pending disputes, and whether either agency can issue binding interim relief while a complaint is pending.

D. Questions for Coverage Gaps

²¹ 47 U.S.C. § 224(a)(1), (4); 47 C.F.R. § 1.1402(a)-(b).

A related problem arises where large categories of pole owners, such as municipal utilities, electric cooperatives, public utility districts, or other government-owned entities, fall outside state pole attachment jurisdiction and may also be excluded from the federal definition of “utility.” Although Section 224 does not provide FCC jurisdiction over poles owned or controlled by entities Congress excluded from the federal pole-attachment regime, including cooperatively organized entities and government-owned entities, that limitation makes the state record more important. The FCC can better assess coverage gaps by asking each reverse-preemption jurisdiction what percentage of poles relevant to broadband deployment are owned by entities outside the jurisdiction’s pole attachment authority; what regulatory forum, if any, is available to a covered attachers denied access to an excluded pole; and whether the jurisdiction has exercised, or needs additional state legislative authority to exercise, jurisdiction over previously excluded pole owners. Identifying these gaps will help the Commission, NTIA, Congress, and the states determine whether deployment-threatening pole-access barriers can be addressed through state regulation, BEAD oversight, voluntary commitments, or legislation.²²

VI. The Commission Should Use Effectiveness Criteria to Evaluate Reverse-Preemption Frameworks

To assist the Commission in evaluating state responses, INCOMPAS suggests a set of effectiveness criteria. These criteria are not proposed as mandatory federal standards at this stage, but rather as benchmarks the FCC could use to assess whether a jurisdiction’s framework raises concerns warranting further Commission attention:

- Publicly available rules implementing state pole attachment authority.
- A specific, publicly disclosed rate methodology.
- Nondiscriminatory access rights for covered attachers.
- Defined timelines for application review, surveys, make-ready estimates, and make-ready completion.
- A process for large and very large orders, or a functionally comparable state alternative.
- Contractor approval procedures, including deemed-approval timelines.
- Self-help and OTMR rights, or a reasoned explanation for any materially different approach.
- Pole inspection report disclosure requirements.
- An expedited complaint process with clear decision timelines capable of resolving deployment-threatening disputes.
- Express coverage of cable systems, providers of telecommunications service, and any additional broadband and wireless attachers covered by state law.
- Clear identification of covered and excluded pole owners.
- Enforcement authority and remedies, including penalties or other consequences for non-compliance with timelines.

VII. The Commission Should Ensure Attachers Are Not Subject to Unnecessary Costs and Delay

²² 47 U.S.C. § 224(a)(1); 47 C.F.R. § 1.1402(a).

The Public Notice asks what else the Commission can do to ensure that attachers in reverse-preemption states are not subject to unnecessary costs and delay due to incomplete or inadequate state regulation. INCOMPAS recommends two additional steps: performance transparency and an attacher challenge process.

Performance Transparency. The Commission should seek, and ultimately make publicly available, performance data on pole attachment proceedings in each reverse-preemption jurisdictions, including average time from application to survey, survey to make-ready estimate, payment to make-ready completion, number of complaints filed, and average complaint resolution time.

Attacher Challenge Process. The Commission should establish a process allowing attachers to petition for review of whether a certification is suitable and applicable to the particular matter, or to invoke the individual-matter reversion rule in Section 1.1405(f). The jurisdiction and pole owner should have an opportunity to respond. If the Commission determines through appropriate procedures that the certification is ineffective or inapplicable, or if the state fails to act within the applicable period, the Commission should exercise jurisdiction to the extent Section 224 otherwise applies.

VIII. Conclusion

For these reasons, INCOMPAS urges the Commission to build a current, state-by-state record, require updated specific certifications, and consider further action where a reverse-preemption jurisdiction cannot demonstrate actual, effective regulation of the pole attachment matters covered by its certification. These steps would preserve the benefits of state regulation where it works while ensuring that covered attachers have a meaningful forum to resolve deployment-threatening disputes.

Respectfully submitted,

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