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
	)	
States That Have Certified That They Regulate Pole Attachments	)	WC Docket No. 10-101

REPLY COMMENTS OF INCOMPAS

I. INTRODUCTION AND SUMMARY

INCOMPAS supports the goal of the Wireline Competition Bureau ("Bureau") in reminding reverse preemption states of their obligation to effectively regulate pole attachments[1] and urges the Federal Communications Commission ("FCC or "Commission") to issue a Notice of Proposed Rulemaking ("NPRM") that sets forth a clear process for determining whether State pole-attachment certifications continue to satisfy Section 224(c). The central principle is straightforward: a State displaces Commission jurisdiction only over matters it actually regulates. Section 224(c) provides that a State is not considered to regulate unless it has adopted and put into effect rules implementing its authority. A certification establishes the State's claim of jurisdiction, but it does not remove the conditions Congress placed on that claim.

[1] *Wireline Competition Bureau Reminds Reverse-Preemption States of Obligation to effectively Regulate Pole Attachments and Seeks Comments 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 (vRel. June 11, 2026) ("Public Notice" or "Notice").

Twenty-three States and the District of Columbia have filed certifications, for a total of 24 reverse-preemption jurisdictions. The record shows substantial differences in their laws, covered entities, procedures, and regulatory practices. It also includes specific evidence that unclear rules, divided authority, and slow complaint or make-ready processes can delay broadband deployment.

The record confirms that State regulation can either facilitate broadband deployment or become a barrier to it. Some certified States have adopted clear rules, workable timelines, and effective dispute-resolution procedures that promote infrastructure investment and competition. Others have incomplete rules, divided regulatory authority, or processes that provide no timely and enforceable remedy when pole access is delayed. In those jurisdictions, certification can leave attachers without the protections available under either a functioning State framework or the Commission's rules. The Commission therefore should initiate a rulemaking to establish an objective and fair process for keeping State certifications current and determining their scope. That process should preserve State authority where a State has adopted and put into effect rules governing the matter at issue, while ensuring that certification does not create a regulatory gap when those statutory conditions are not met.

The proposed NPRM would respect the federal-State division Congress established. States would retain authority over matters they regulate under Section 224(c), and the Commission would act only when the statutory conditions are not met. INCOMPAS asks the Commission to propose: current certifications identifying the matters and entities covered; a public repository with periodic and event-triggered updates; a fair process for reviewing a certification as applied to a specific matter; notice and an opportunity to correct any deficiency; and consequences limited to matters otherwise within Section 224's scope. This approach would preserve well-functioning State regimes without requiring States to adopt federal policy choices.

II. SECTION 224 ALLOWS THE COMMISSION TO DETERMINE WHETHER A STATE ACTUALLY REGULATES THE MATTER AT ISSUE

EEI and several State commenters correctly note that Section 224(c)(1) denies the Commission jurisdiction over pole-attachment matters regulated by a State. But the statute also sets out what a State must do to displace federal jurisdiction. The State must certify that it regulates pole-attachment rates, terms, and conditions; consider the interests of communications subscribers and utility customers; adopt and put into effect rules governing pole attachments; and take timely final action on individual complaints.[2] Treating a certification as permanently controlling when those requirements are not met would prevent the Commission from applying the conditions Congress enacted.

Section 1.1405(a) of the Commission's rules requires the Commission to treat a suitable State certification as proof that it lacks jurisdiction over the matters covered by the certification.[3] Section 1.1405(f) also expressly provides that jurisdiction returns to the Commission for an individual matter if the State does not take final action on the complaint within the applicable deadline.[4] A missed deadline does not invalidate the State's entire certification. However, the rule does not explain how the Commission should proceed when a certification may no longer accurately identify the matters the State regulates. An NPRM should address that separate issue and establish a fair process for reviewing and updating certifications.

In its comments, New York relies on *BellSouth Telecommunications, LLC v. Louisville/Jefferson County Metro Government* and *MCI Telecommunications Corp. v. New York*

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[2] *See* 47 U.S.C. § 224(c).

[3] 47 C.F.R. § 1.1405(a) (2025).

[4] Section 1.1405(f) provides: "Notwithstanding any such certification, jurisdiction will revert to this Commission with respect to any individual matter, unless the state takes final action on a complaint regarding such matter: (1) Within 180 days after the complaint is filed with the state, or (2) Within the applicable periods prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint."

Telephone Co. to argue that State certification forecloses broader Commission review.[5] Those decisions establish that an operative State certification displaced the Commission's pole-attachment rules in the particular disputes before the courts.[6] Neither court considered whether the Commission may establish procedures for determining the current scope and continuing accuracy of a certification or whether the certification continues to satisfy Section 224(c)(2)–(3). The Commission can respect the jurisdictional effect those decisions gave existing certifications while establishing a prospective process for reviewing and updating the information on which that jurisdictional determination rests.

Several State commenters identify elements that could make any review process more workable. West Virginia states the Commission may review State rules, practices, and procedures in response to a complaint and recommends that, before invalidating a certification, the Commission identify its concerns, allow the State to provide additional information, and provide a cure period for any deficiency.[7] Michigan states that, if the Commission considers invalidating a certification, the State must have an opportunity to demonstrate its compliance.[8] Ohio states that, to the extent the Commission evaluates pre-1996 certifications, it should do so on a State-by-State basis.[9] Arkansas, although opposing continuing federal oversight and recertification, states that certifications could be updated when a change in State rules affects the

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[5] Comments of the New York State Public Service Commission (filed July13, 2026) ("New York Comments").

[6] *BellSouth Telecommunications, LLC v. Louisville/Jefferson County Metro Government,* 275 F. Supp. 3d 833, 841 (W.D. Ky. 2017); *MCI Telecommunications Corp. v. New York Telephone Co.,* 134 F. Supp. 2d 490, 503 (N.D.N.Y. 2001); New York Comments at 4-5.

[7] Comments of the Public Service Commission of West Virginia at 3–4 (filed July 13, 2026) ("West Virginia Comments").

[8] Comments of the Michigan Public Service Commission at 6 (filed July 13, 2026) ("Michigan Comments").

[9] Comments of the Staff of the Public Utilities Commission of Ohio at 8 (filed July 13, 2026) ("Ohio Comments").

scope of State jurisdiction and that an informational federal repository of State rules could be useful.[10] Maine recommends a collaborative process that allows a State to supplement or clarify its certification before the Commission considers reasserting jurisdiction.[11] Although these commenters differ on whether and when review is warranted, their proposals show that a carefully limited Commission process need not displace effective State regulation.

III. EEI'S LEGAL OBJECTIONS DO NOT PREVENT A NARROW RULEMAKING

EEI argues that Section 224(c) creates a binary allocation of authority: a pole-attachment matter is regulated either by a State or by the Commission, and an accepted State certification conclusively establishes the Commission's lack of jurisdiction. INCOMPAS agrees that only one regulator may exercise authority over a particular matter. But that does not answer how the Commission should determine the current scope of a certification or whether the statutory conditions underlying it remain satisfied. Section 224(c)(3)(A) provides that a State "shall not be considered to regulate" unless it has issued and made effective rules implementing its pole-attachment authority.[12] An NPRM may consider a prospective process through which States identify those rules and the entities, facilities, and matters they cover, without second-guessing the States' substantive policy choices.

EEI also argues that Section 224(c)(3)(B) provides the exclusive mechanism for restoring Commission jurisdiction after certification: a State's failure to take timely final action on an individual complaint. But subsections (A) and (B) of Section 224(c)(3) impose distinct requirements. Subsection (A) addresses whether the State has issued and made effective

[10] Comments of the Arkansas Public Service Commission at 6 (filed July 13, 2026) ("Arkansas Comments").

[11] Comments of the Maine Connectivity Authority at 4 (filed July 13, 2026) ("Maine Comments").

[12] Comments of the Edison Electric Institute at 3–5 (filed July 13, 2026) ("EEI Comments"); 47 U.S.C. § 224(c)(1)–(3); 47 C.F.R. § 1.1405(a).

implementing rules. Subsection (B) separately provides for reversion of jurisdiction over an individual matter when the State does not take timely final action on a complaint. Although subsection (A) does not itself prescribe a review procedure, the Commission may seek comment on how to determine whether that independently stated statutory condition remains satisfied.[13]

The FCC Enforcement Bureau's March 2026 *Verizon–Metropolitan Edison Order* does not resolve that broader question. The Bureau held Pennsylvania had taken timely final action on Verizon's complaint for purposes of Section 224(c)(3)(B). It declined to address Verizon's separate Section 224(c)(3)(A) argument because Verizon had raised it only cursorily and had not properly presented it. The Bureau added that the Pennsylvania Supreme Court had not vacated any of the State's pole-attachment rules and that, apart from the aspects found inconsistent with state law, those rules continued to apply. The Bureau's order therefore resolves only Verizon's request to reopen its individual complaint proceeding on the record presented; it does not address whether the Commission may establish a prospective, generally applicable process for reviewing the scope or continuing accuracy of State certifications.[14]

The other decisions cited by EEI likewise do not resolve the question of the FCC's authority to review State certifications. *FCC v. Florida Power Corp.* considered whether the Pole Attachment Act and an FCC rate order effected an unconstitutional taking. *NCTA v. Gulf Power Co.* considered whether the Act covers attachments used to provide commingled cable and broadband internet services and attachments by wireless telecommunications providers. *Southern Co. v. FCC* reviewed several FCC rules implementing the 1996 amendments, including rules governing covered facilities, capacity, reserved space, contractor qualifications, and pole modifications. None of those decisions considered whether the Commission may require States

[13] EEI Comments at 6–7; 47 U.S.C. § 224(c)(3)(A)–(B).

[14] *Verizon Pennsylvania LLC et al. v. Metropolitan Edison Co. et al.*, Proceeding No. 26-44, Order, DA 26-232, paras. 7–13 & nn.24, 42 (EB Mar. 11, 2026) ("*Verizon–Metropolitan Edison Order*").

to update the information supporting their certifications or establish a process for determining whether a certification continues to satisfy Section 224(c).[15]

EEI and State commenters also rely on legislative history describing pole-attachment regulation as primarily local and the federal role as supplemental. That history supports State primacy where a State satisfies Section 224(c), and it counsels against using certification review to impose federal substantive standards on reverse-preemption States. But it does not displace Section 224(c)(3)(A)'s express requirement that a State issue and make effective rules implementing its regulatory authority over pole attachments. Nor does that pre-1996 legislative history answer whether certifications filed before Congress expanded Section 224 in 1996 remain coextensive with the entities and attachments covered by current State law.[16]

EEI further argues Congress enacted Section 253 to address State or local legal requirements which prohibit or have the effect of prohibiting the provision of telecommunications service. Section 253 may provide a remedy for a particular State or local barrier, but it serves a different statutory function from Section 224(c). A rule requiring States to identify the legal basis and scope of their certifications would administer Section 224(c). It would neither preempt a particular State or local requirement under Section 253 nor collapse the two provisions into a single statutory framework.[17]

EEI also cautions that standards such as "effective" or "transparent" could invite open-ended federal review, disrupt settled expectations, and raise federalism concerns. The Commission can address those concerns by limiting review to objective statutory questions, not

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[15] *FCC v. Florida Power Corp.*, 480 U.S. 245, 250–54 (1987); *National Cable & Telecommunications Ass'n v. Gulf Power Co.*, 534 U.S. 327, 333–42 (2002); *Southern Co. v. FCC*, 293 F.3d 1338, 1343–49 (11th Cir. 2002); EEI Comments at 11–12.

[16] S. Rep. No. 95-580, at 16–18 (1977); H.R. Rep. No. 95-721, at 10 (1977); 47 U.S.C. §§ 224(a)(4)–(5), (c)(3)(A); Telecommunications Act of 1996, Pub. L. No. 104-104, § 703, 110 Stat. 56, 149–50; EEI Comments at 7–8, 10–12.

[17] 47 U.S.C. § 253; EEI Comments at 9–10.

free-floating assessments of the quality of State regulation. Those questions include whether the State has issued and made effective rules implementing its authority for the relevant type of pole attachment and pole owner; whether the State has the authority to consider and does consider the interests identified in Section 224(c)(2)(B); and, with respect to an individual matter, whether the State has taken final action on a complaint within the period specified in Section 224(c)(3)(B). The process should provide notice, allow the State to explain its authority or correct an identified deficiency, and require written findings based on the record. Any resulting determination should operate prospectively and extend no further than Section 224 authorizes.[18]

INCOMPAS agrees that the Commission should protect settled expectations. A certification review should not reopen final State orders or resolved disputes. For pending and future matters, the Commission should seek comment on how to determine whether State law and implementing rules cover the matter at issue and what consequences should follow if a State does not correct an identified gap. This approach would preserve State authority where Section 224(c)'s conditions are satisfied while preventing regulatory gaps where they are not.

IV. THE COMMISSION SHOULD ACCOUNT FOR DIFFERENCES AMONG STATE REGULATORY REGIMES

The State filings describe different regulatory approaches. Florida reports that its rules took effect in 2022 and use FCC rate formulas. Maine describes one-touch make-ready, a pole-management database, and expedited dispute procedures. Michigan describes its 2021 review and steps to ensure action on complaints within 180 days. Ohio reviews new FCC pole-attachment rules each year and decides whether to adopt them. West Virginia describes formal

[18] EEI Comments at 10, 12–13; 47 U.S.C. § 224(c)(2)–(3); Michigan Comments at 5–8; West Virginia Comments at 3–4.

complaint proceedings and work on a pre-complaint dispute process.[19] These examples support a process that recognizes effective State regulation rather than imposing one federal model.

Updated certifications and a public repository would allow attachers, pole owners, regulators, and the Commission to see what each State regulates without reconstructing decades of statutes, rules, orders, tariffs, and amendments. States with comprehensive frameworks could confirm their status with little disruption. States with divided authority, outdated certifications, or gaps in coverage would have a clear process for explaining or correcting them.

When reviewing updated information, the Commission should distinguish among four situations: the State has no implementing rule; the State has a rule, but it is outdated or does not cover the particular attacher, pole owner, facility, or dispute; the State has rules but does not provide an available and timely complaint process; or the record lacks enough information to decide. Each situation requires a different response. An incomplete record should lead to focused information gathering, not an unsupported finding of noncompliance. At the same time, the existence of some State regulation should not establish that the State regulates every matter covered by its certification.

The 18 States and the District of Columbia that filed their initial certifications before Congress expanded Section 224 in 1996 should confirm that their current laws and rules cover attachments by providers of telecommunications service and provide those providers with a timely complaint process. This review should not automatically invalidate older certifications. FBA notes the Commission requested updated certifications after the 1984 amendments and Illinois acknowledged in 2018 that its rules did not cover telecommunications providers'

[19] Letter from the Florida Public Service Commission at 1-2 (filed July 10, 2026); Maine Comments at 1-5; Michigan Comments at 2-6; Ohio Comments at 2-9; West Virginia Comments at 4-7.

attachments to electric-utility poles. An NPRM should establish a uniform process for identifying and addressing similar gaps.[20]

V. THE RECORD SHOWS INSUFFICIENT STATE REGULATORY OVERSIGHT CAN DELAY BROADBAND DEPLOYMENT

GoNetspeed reports operating more than 12,300 fiber route miles that pass approximately 735,000 locations and use almost half a million pole attachments. It states that processing an application through licensing in Massachusetts can take more than four years. GoNetspeed attributes these delays in part to divided authority between two State agencies, the absence of generally applicable processing timelines and remedies, and conflict between complaint and rulemaking procedures.[21]

Sonic provides detailed evidence from California. Sonic reports more than 150,000 attachments and field analysis of more than 215,000 poles. According to Sonic, data PG&E provided to the CPUC identified 19,949 poles requiring replacement, 7,551 requiring reinforcement, and 734 requiring other structural work, with average delays of 591 days for reinforcement and 1,983 days for replacement. Sonic states pole conditions prevented it from reaching 27,641 of 60,667 targeted homes in San Francisco, led it to abandon deployment plans in Napa, and required costly temporary bypass poles in other communities.[22]

NTCA reports that its rural-provider members face increasing make-ready costs and completion times, more disputes over pole-replacement costs, and complaint processes that do not resolve disputes efficiently. NTCA identifies one Midwestern State that excludes local exchange carriers from pole-access protections available to other providers and one Northeastern

[20] Public Notice at 3-4 & nn.13, 21; Comments of the Fiber Broadband Association ("FBA") at 4-5 & nn.20-21 (filed July 13, 2026) ("FBA Comments").

[21] Comments of GoNetspeed at 1, 8-13 (filed July 13, 2026) ("GoNetspeed Comments").

[22] Comments of Sonic Telecom, LLC at 2, 4-8 (filed July 13, 2026) ("Sonic Comments") (characterizing the broader estimate of potentially noncompliant PG&E poles as an extrapolation).

State where a member's access dispute had lasted nearly four years when the comments were filed.[23]

NCTA and FBA add evidence about regulatory coverage and deployment costs. NCTA's State-by-State analysis identifies certified jurisdictions with older rules or without provisions addressing access timelines, self-help, one-touch make-ready, or expedited dispute resolution. FBA reports that median underground fiber construction cost $18 per linear foot in its 2025 survey, compared with $8 per linear foot for aerial construction, and notes Illinois's 2018 statement that its rules did not cover telecommunications carriers' attachments to electric-utility poles.[24]

The scale of current broadband construction makes clear rules especially important. The Bureau cites an analysis estimating that BEAD projects could touch approximately 3.95 million utility-owned poles across 2,053 electric-utility service territories and that pole-related costs could range from $534 million to $4.63 billion. These illustrative estimates show the potential scale of the issue.[25]

Importantly, nothing proposed here would weaken safety or reliability protections. Section 224 allows a utility to deny access when capacity is insufficient or for reasons of safety, reliability, or generally applicable engineering purposes, provided it does so without discrimination.[26] Clear procedures benefit both pole owners and attachers by identifying required information, assigning responsibility, and resolving disputes promptly. Utilities would retain the

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[23] Comments of NTCA-The Rural Broadband Association at 2-4 (filed July 13, 2026) ("NTCA Comments").

[24] Comments of NCTA-The Internet & Television Association at 1-5 & App. (filed July 13, 2026) ("NCTA Comments"); FBA Comments at 1-2, 5 & nn.3-4, 21.

[25] Public Notice at 4 & n.17; Comments of INCOMPAS at 2-3 (filed July 13, 2026) ("INCOMPAS Comments").

[26] 47 U.S.C. § 224(f)(2).

right to deny unsafe or infeasible attachments, but they should make those decisions on time and explain them under the applicable rules.

VI. THE NPRM SHOULD PROPOSE A FAIR AND LIMITED CERTIFICATION PROCESS

- Current, specific certifications. Require each jurisdiction to identify the attachers, pole owners, facilities, and matters covered; cite operative statutes, rules, and orders; describe the public repository and updates. Publish current certification materials in a searchable State-by-State repository. Require updates after material changes in State law or jurisdiction and reasonable periodic confirmation.

- Focused review process. Allow an attacher or other interested party to present specific evidence that a claimed matter lacks an operative rule or timely complaint forum. Require service on the State and affected pole owner and provide a full opportunity to respond.

- Notice and cure. Before changing the effect of a certification, identify the specific deficiency and give the State a reasonable opportunity to correct it. This process would be separate from the matter-specific return of jurisdiction under Section 224(c)(3)(B).

- Limited consequences. Limit any determination to the attacher, pole owner, facility, or matter the State does not regulate. Assert federal jurisdiction only where Section 224 otherwise applies; do not extend federal jurisdiction to poles excluded by the statute.

- State policy flexibility. Treat recent FCC reforms as useful examples, not mandatory conditions of certification. The statutory question is whether the State regulates the matter, not whether its rules match the Commission's rules word for word.

- Operational information. Collect comparable information on application volume, processing and make-ready timelines, pole-replacement timing, estimated and final charges, complaints, and time to final action. Use this data to identify gaps and delays, not as rigid national performance standards.

- Safety and consumer interests. Consider safety, reliability, capacity, workforce, and utility-customer impacts together with deployment, competition, affordability, and the interests of communications subscribers.

VII. CONCLUSION

INCOMPAS urges the Commission to issue an NPRM that preserves effective State regulation while ensuring that reverse preemption remains tied to the conditions Congress enacted. Updated information, objective review criteria, notice and an opportunity to cure, and consequences limited to matters a State does not regulate would give States, pole owners, and attachers clearer rules for resolving disputes and completing broadband deployments.

July 27, 2026

Respectfully submitted,
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