

## Correcting the Record: Pole Attachments

*House Energy and Commerce Committee, Communications and Technology Subcommittee  
Legislative Hearing: "Breaking Barriers: Streamlining Permitting to Expedite Broadband  
Deployment" | April 19, 2023*

By the FCC's estimates, more than 14 million unserved Americans are still awaiting broadband connectivity. Due to the excessive costs and needless delays that internet service providers (ISPs) often face when attaching to poles, these unserved Americans may have to wait longer. As Commissioner Michael O'Rielly recently [explained](#): "the underlying process to obtain access to these poles strains credibility and the rates being charged far exceed established norms."

Some pole owners have sought to defend the status quo by mischaracterizing efforts to address pole-related barriers as an unfair subsidy for rural broadband projects. Nothing could be further from the truth. In reality, the abuse of an outdated process for adding new broadband infrastructure to existing poles continues to impede broadband deployment to the citizens and communities that need it most.

**Congress must act to remove obstacles which enable unfair pole owner practices that stand in the way of speedy broadband deployment to unserved communities. [The Fair Access to Internet Ready Poles \(FAIR Poles\) Act](#) would do just that by taking the critical step of helping to guarantee predictable, fair access to more poles in rural communities. The government should not tolerate or subsidize anti-competitive behavior that delays broadband deployment – especially in unserved areas**

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**"The narrative for offering this [FAIR Poles Act] proposal is that broadband attachers are having difficulty spending federal broadband funding they have recently received because attachment rates are making deployment costs too high or that utilities are making access to poles too difficult...these assertions are false..." (Source: [Letter from APPA, NRECA & UTC](#), April 20, 2023)**

This assertion ignores the reality facing broadband deployment in this country. To bring broadband service to unserved communities, ISPs look to attach infrastructure to utility poles, especially in rural communities where other options (e.g. going underground) are not feasible or are cost-prohibitive given the topography and long distances that must be covered in deployment. Communities typically have one set of utility poles, which means only one pole owner. In rural, unserved areas where broadband expansion projects frequently span miles and miles of territory, providers must negotiate agreements with this pole owner for hundreds, if not thousands, of utility poles to connect relatively few homes and small businesses. This process can lead to disputes and unnecessary delays, which prevent communities from receiving the broadband they need. By one measure, delayed or derailed broadband expansion [results](#) in approximately \$491 million to \$1.86 billion in forfeited national economic gains every month.

Take the recent example of an electric cooperative pole owner in Kentucky that [limited](#) the number of pole attachment applications it would accept to only 120 per month from an internet provider. Under this timeline, it would take the provider up to 14 years to secure the pole access needed to bring connectivity to every customer in the areas it was trying to provide service.

**“The FAIR Poles Act’ is a thinly veiled attempt to have not-for-profit electric utilities subsidize for-profit entities’ infrastructure.” (Source: [Letter from APPA, NRECA & UTC, April 20, 2023](#))**

No one is asking the utilities to subsidize anything. Broadband providers are not seeking free access to poles. Instead, broadband providers are only asking to pay their fair share and nothing more.

Unfortunately, pole owners too often use a pole attachment request by a broadband provider as an excuse to delay a potential competitor's broadband buildout or to extract as much money as possible from the attaching provider. This situation is particularly problematic when broadband providers are building out with federal funds to reach our country's most vulnerable and unserved communities.

While federal regulations seek to provide predictable, timely, and reasonable access to poles, these regulations do not apply to the millions of poles owned by municipal systems and electric cooperatives thanks to an exemption in Section 224 of the Communications Act that was put in place nearly 50 years ago. As a result, these pole owners routinely slow-roll the processing of attachment requests and/or look to unfairly shift their own pole costs onto the attaching broadband entity -- a result that slows down deployment and unfairly increases deployment costs.

For example, Kansas-based internet provider IdeaTek [reported](#) being “allocated 100 percent of the [pole] replacement costs on applications that require make-ready and pole replacement, with no consideration given to the enrichment and benefit this confers to the utility or the current value or condition of the pole.” Lumos Network noted its regular [encounters](#) of being forced to absorb the entire cost of survey and pole make-ready work merely because it happened to be the first attacher requesting access to a certain route or to certain pole lines. The pole owners typically expect the new attacher to pay all of the costs of pole make-ready and will then often seek additional remuneration from existing attachers for costs they already recouped.

**“Electric cooperatives work in good faith to negotiate reasonable rates for pole attachments...” (Source: [Louis Finkel/NRECA Witness Statement, April 19, 2023](#))**

If all pole owners, including electric cooperatives, truly negotiated in good faith, the public record would not be [flooded with examples](#) of needless disputes between service providers and pole owners around time-consuming, costly, and inconsistent demands forced onto pole attachers.

Moreover, the focus of the FAIR Poles Act is not on the annual attachment rates imposed by pole owners onto attachers, but instead, to prevent time-consuming delays in the attachment process and to ensure that costs are allocated appropriately between pole owners and attachers. Each of these challenges contribute to cost increases and construction delays that jeopardize the federal government's goal of connecting 100 percent of Americans to broadband, as quickly as possible.

The bottom line is that the current special exemptions afforded to municipal systems and electric cooperatives create (if left unchecked) an unfortunate incentive for them to delay infrastructure investment, unfairly offload expenses, deny access to alternative providers, and even freeze out potential competition for public funds.

For example, a [recent ongoing pole dispute](#) has left over 2,000 South Carolinians experiencing needless delays in broadband connectivity because an electric cooperative would not allow an ISP access to its poles. The cooperative demanded the pole attacher comply with new and unreasonable construction requirements that exceeded well-established National Electric Safety Code (NESC) requirements commonly used across the country. More than 12 months after the ISP's initial request for pole access, the state's Public Service Commission (PSC) issued an order requiring the cooperative to allow the ISP access to its poles for attachment under existing NESC standards. Now 16 months and counting after the ISP's initial request for pole access, the cooperative still has not officially granted access to its poles, impacting deployment to more than 2,000 residents.