



April 18, 2023

The Honorable Cathy McMorris Rodgers  
Chairman  
House Energy & Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Frank Pallone  
Ranking Member  
House Energy & Commerce Committee  
2123 Rayburn House Office Building  
Washington, DC 20515

The Honorable Bob Latta  
Chairman  
Subcommittee on Telecommunications  
& Technology  
House Energy & Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Doris Matsui  
Ranking Member  
Subcommittee on Telecommunications &  
& Technology  
House Energy & Commerce Committee  
2123 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Rodgers, Ranking Member Pallone, Chairman Latta, and Ranking Member Matsui:

On behalf of the American Public Power Association (APPA), National Rural Electric Cooperative Association (NRECA), and Utilities Technology Council (UTC), we write to express our opposition to the draft proposal being discussed by the committee, titled the "Fair Access to Internet Ready Poles (FAIR Poles) Act." APPA, NRECA, and UTC believe that this proposal is a thinly veiled attempt to have not-for-profit electric utilities subsidize for-profit entities' infrastructure.

APPA is the national trade organization representing the interests of the nation's 2,000 not-for-profit, community-owned electric utilities. Public power utilities are located in every state except Hawaii. They collectively serve over 49 million people. Public power utilities are load-serving entities, with the primary goal of providing the communities they serve with safe, reliable electric service at the lowest reasonable cost, consistent with good environmental stewardship.

NRECA is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. America's not-for-profit electric cooperatives are owned by the people that they serve and comprise a unique sector of the electric industry. From growing regions to remote farming communities, electric cooperatives power 1 in 8 Americans and serve as engines of economic development for 42 million Americans across 56 percent of the nation's landscape.

UTC is the international trade association for the telecommunications and information technology interests of electric, gas, and water utilities and other critical infrastructure industries. UTC's members own, maintain, and operate extensive communications systems that they use to support the safe, reliable, and secure delivery of essential energy and water services. UTC advocates for policies to promote utilities' communications systems and protect utility critical infrastructure.

This draft proposal would amend section 224 of the Communications Act to provide that the current exemption public power utilities and electric cooperatives have from Federal Communications Commission (FCC) jurisdiction over pole attachments would not apply to entities that receive certain federal broadband assistance. The narrative for offering this 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 by requiring recovery of pole replacement costs. These assertions are false and essentially imply that not-for-profit electric utilities are making it difficult for their communities to receive broadband service. That premise couldn't be further from the truth given such not-for-profit utilities are owned by their customers and want them to have essential broadband services.

Congress first addressed pole attachments in the Pole Attachment Act of 1978, which added section 224 to the Communications Act, 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.

Public power utilities and electric cooperatives were created to serve communities that were hard to reach, impoverished, or were too expensive to be served by for-profit entities with reliable electric service. That same dynamic exists now in broadband deployment for our communities. The economics of deploying broadband infrastructure in rural areas with low population densities and difficult terrain is cost-intensive and presents little opportunity for return on investment. APPA, NRECA, and UTC strongly support the goals of ensuring every American has access to broadband service. However, this legislation would ask not-for-profit electric utilities and their customers to subsidize for-profit companies' infrastructure build-out.

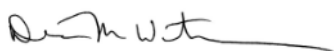
Electric utilities must balance their own need to maintain and operate their utility systems in a safe, reliable, and affordable manner while also addressing the often-competing needs of a variety of attaching communications entities. Congress has repeatedly recognized that federal pole attachment regulation is unnecessary for public power and electric cooperative pole owners because they are owned by their customers, the same customers that would benefit from communications services provided over the facilities attached to their poles. Not-for-profit electric utilities have every incentive to apportion the costs of constructing and maintaining the pole attachments in an equitable manner among attaching entities.

This legislative proposal is nothing more than an effort to weaken or eliminate the exemption in section 224 of the Communications Act. Modifying or eliminating the exemption will not result in any significant increases in broadband deployment, adoption, and use. Instead, it will merely result in not-for-profit electric utility customers subsidizing for-profit telecommunications and cable companies.

Thus, APPA, NRECA, and UTC oppose this draft legislation, which would weaken or eliminate the exemption in section 224 for consumer-owned poles.

Thank you for your time and consideration.

Sincerely,



Desmarie Waterhouse  
Senior Vice President of Advocacy and  
Communications & General Counsel  
American Public Power Association



Louis Finkel  
Senior Vice President of Government  
Relations  
National Rural Electric Cooperative  
Association



Brett Killbourne  
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Counsel  
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