

NTIA Plans to Impose BEAD Program Subgrantee Pole Attachment Requirements

Key Takeaways

- On January 12, NTIA issued new BEAD General Terms and Conditions, which direct state broadband offices to require that all pole owner subgrantees comply with FCC pole attachment rules, rates and timelines across their entire footprint (not just in BEAD-funded areas) – a regulatory structure that Congress explicitly exempted co-ops from in Section 224 of the Communications Act.
- This NTIA directive is unacceptable as it could render BEAD projects financially unfeasible and expose cooperative participants to litigation and/or funding rescission risk.
- More broadly, NTIA's directive violates the Section 224 exemption set forth by Congress, which preserves co-ops' ability to safely manage and maintain their pole infrastructure and is contrary to many state statutes.
- State decisions on whether to include NTIA's pole language in their subgrantee agreements will vary. BEAD provisional awardees and their legal counsel should carefully review their state subgrantee agreement before signing.

Background

The National Telecommunications and Information Administration (NTIA) released updated [BEAD Program General Terms and Conditions](#) on January 12, 2026 (backdated to November 2025) that apply Federal Communications Commission (FCC) pole attachment rules, rates, and timelines to electric cooperatives as a condition of participation in the Broadband Equity, Access, and Deployment (BEAD) program. This last-minute decision is problematic because it fundamentally alters – without notice – regulatory rules of the road and financial commitments for the 62 electric cooperatives that have been planning to provide broadband service to more than 120,000 unserved locations across 27 states. NTIA's pole language also evidences a clear intent to chip away at the statutory Section 224 exemption for all co-ops over time.

The Big Picture

Section 13.D.1.e, found on page 10 of the Terms and Conditions, directs state broadband offices to require BEAD subgrantees that own poles to adhere to FCC pole attachment rules, fees, timelines and regulations across the entirety of a pole owner's footprint – not just in BEAD-funded areas. In the context of BEAD, this language would accomplish what attachers have sought to do more broadly for some time – lower their costs to benefit shareholders and shift rural broadband deployment costs to cooperatives and their electric rate payers. The updated Terms and Conditions explicitly reference cooperatives, and state that project delays attributable to a failure to follow FCC pole attachment rules will be included in states' semi-annual reports –

and that these reports will be made available to the FCC and Congress to determine whether legislation to remove the Section 224 exemption for co-ops is warranted.

While NTIA *can* condition federal grant funds, whether state broadband offices have the authority to regulate utility pole attachment requirements is unclear – and varies state by state. Further, application of FCC pole attachment rules to cooperatives (which are explicitly exempt from such regulation under Section 224 of the Communications Act) could contradict existing law where poles are regulated by state statute and/or in states where poles are regulated by the Tennessee Valley Authority. NTIA’s pole attachment requirements would also conflict with existing pole attachment agreement terms.

NRECA Advocacy

NRECA CEO Jim Matheson sent a [letter](#) to U.S. Department of Commerce Secretary Howard Lutnick explaining how critical the Section 224 exemption is to rural electric cooperatives’ business model, discussing how detrimental NTIA’s language may be to co-ops’ continued BEAD participation, and requesting that the Secretary reconsider the pole requirement. Also, NRECA Broadband staff have met with NTIA and Congressional offices to express opposition to this language and request that it be removed. NRECA Broadband is seeking clarity on whether and how state broadband offices intend to implement NTIA’s requirement.

State Broadband Office Advocacy and Talking Points

We encourage co-ops to engage with state broadband offices (SBOs) to convey concerns about NTIA’s pole attachment language and oppose the language’s inclusion in the state subgrantee agreement. We also encourage co-ops to ask their SBOs about whether the office plans to include the language, if the office has conveyed those plans to NTIA, and other questions about corporate structure implications and how NTIA’s language could impact long-standing contractual agreements. Co-ops are encouraged to share feedback from these discussions with [Erin Fitzgerald Dobozy](#) and [Brian O’Hara](#). This input will help inform NRECA’s advocacy as states move forward with BEAD implementation.

Questions for State Broadband Offices

- Has the state broadband office determined if it has the authority to include NTIA’s pole attachment provision in the state subgrantee agreement?
- If the SBO has determined that it does not have the authority to include the language – have you informed NTIA, and how has staff responded?
- If the SBO has determined it has the authority to include the language, can you provide us with information on the state statute granting that authority?
- If a co-op is a subgrantee, can its broadband subsidiary (which does not own poles) sign the subgrantee agreement?
- Typically, a pole attachment agreement term is for 5 to 10 years. Would any pole attachment language in the subgrantee agreement take precedence over existing pole attachment agreements?

Talking Points to Frame State Broadband Office Advocacy

- We oppose NTIA’s effort to impose FCC pole attachment rules, regulations and timelines on electric cooperatives.
- Congress specifically exempted electric cooperatives from these rules, recognizing that cooperatives’ locally driven decision making is adequate to balance the communications needs of rural communities with the safety and reliability needs of the electric utilities that serve them.
- In addition to disregarding the exemption, NTIA would require co-ops to adhere to FCC pole attachment regulations *throughout our entire service territory* – not just in the areas for which we’re receiving BEAD funding.
- We feel strongly that this is an overreach, and one that infringes on the state legislature and public utility commission’s authority to make pole attachment regulatory decisions.
- Further, adhering to FCC pole regulatory rules could render our BEAD project financially unfeasible.
- The “Benefit of the Bargain” and “Best and Final” attempts to cut our bids already left us wondering if we could continue to participate in BEAD. Following FCC pole attachment rules may be the final nail in the coffin for our project’s business case.
- Rather than promoting efficient permitting and deployment, this pole attachment requirement is confusing, exposes us to potential legal liability, and may ultimately prompt program departures.

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