TC – 2 Resolution on Preservation of State Authority Under Section 224(c) of the Communications Act

Whereas access to reliable broadband Internet service is essential to consumers and to the growth and competitiveness of the nation's economy in the 21st century;

Whereas access to poles at just and reasonable rates, terms, and conditions is essential to the deployment of such service;

Whereas Section 224 of the Communications Act, 47 U.S.C. § 224, establishes a framework governing the rates, terms, conditions, and access to poles, ducts, conduits, and rights-of-way for pole attachments;

Whereas Section 224(c)(1) creates a clear jurisdictional boundary between federal and state authority, specifying that “nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access…in any case where such matters are regulated by a State;”

Whereas such states play a critical role in facilitating broadband deployment because they are well-positioned to ensure access to poles at just and reasonable rates, terms, and conditions;

Whereas more than 20 states and the District of Columbia have certified under Section 224(c) that they regulate pole attachment rates, terms, and conditions, and have issued and made effective rules and regulations implementing such authority;

Whereas state commissions are uniquely positioned to balance broadband deployment objectives with electric system safety, reliability, engineering practices, workforce constraints, and cost allocation considerations affecting electric utility customers as contemplated under Section 224 (c);

Whereas these certifications reflect deliberate policy judgments by state commissions to regulate pole attachments at the state level to account for local conditions, including system safety, engineering practices, workforce availability, reliability obligations, and cost allocation considerations;

Whereas state pole attachment regulation necessarily involves balancing the needs of communications providers with the interests of electric utility customers, including determinations regarding the appropriate allocation of broadband deployment costs between attachers and electric ratepayers;

Whereas on June 11, 2026, the Federal Communications Commission’s Wireline Competition Bureau issued a Public Notice seeking comment on potential changes to the Commission’s certification rules, including whether to review state certifications and assess whether state regulatory regimes are sufficiently “transparent” and “effective”;

Whereas the Public Notice raises the prospect of ongoing federal evaluation of state regulatory regimes based on qualitative criteria not specified in Section 224(c), including assessments of the adequacy or effectiveness of state rules;

Whereas Section 224(c)(3)(A) requires only that states issue and make effective rules and regulations implementing their regulatory authority, and does not establish a federal standard for evaluating the substantive adequacy, efficiency, or policy outcomes of those rules;

Whereas Section 224(c)(3)(B) provides a narrow, matter-specific mechanism under which Commission jurisdiction may reattach where a state fails to take final action on an individual complaint within a defined timeframe, demonstrating that Congress identified limited and specific circumstances for federal re-entry;

Whereas Congress did not provide the Commission with authority to conduct ongoing review of certified state regulatory regimes, to impose federal performance standards, or to revoke or condition state certifications based on policy disagreement;

Whereas adoption of an "effectiveness," "clarity," or "adequacy" standard would allow the Commission to second-guess state policy judgments and effectively reassert jurisdiction whenever it disagrees with how a state regulates pole attachments;

Whereas such an approach would render reverse preemption meaningless by converting state authority into a conditional delegation subject to continuing federal approval, contrary to the jurisdictional structure specified by Congress;

Whereas reverse-preemption states have adopted regulatory frameworks reflecting differing local conditions, infrastructure characteristics, public policy priorities, and cost-allocation decisions, and Congress did not require uniformity among such regimes.

Whereas reinterpreting Section 224(c) to authorize ongoing federal oversight would represent a significant expansion of federal authority into areas traditionally regulated by states, raising substantial federalism concerns; *now, therefore be it*

Resolved, that because the plain text of Section 224(c) establishes a jurisdictional framework under which states that have certified and implemented regulation of pole attachment rates, terms, conditions, and access retain primary and exclusive authority over those matters, the Board of Directors of the National Association of Regulatory Utility Commissioners, convened in NARUC 2026 Summer Policy Summit in Minneapolis, Minnesota, respectfully

> [i] urges the Commission to respect the statutory framework enacted by Congress and to refrain from converting state certification under Section 224(c) into a system of ongoing federal review, supervision, or oversight;
>
> [ii] opposes any misconstruction of that plain text that would purport to expand the Federal Communications Commission's jurisdiction to conduct ongoing review of state regulatory regimes, evaluate their adequacy or effectiveness, impose federal benchmarking standards, or revisit or condition state certifications based on policy disagreements;
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> [iii] urges the Commission to recognize the distinction between the absence of state regulation and disagreement with state regulation, and to limit any assertion of federal jurisdiction to

circumstances where a true regulatory gap exists consistent with the statutory framework; *and be it further*

Resolved that NARUC supports and encourages reverse-preemption states to exercise their authority to advance broadband deployment by adopting and enforcing rules and polices that ensure access to poles at just and reasonable rates*, and be it further*

Resolved that NARUC supports voluntary and collaborative efforts to improve transparency, coordination, and best-practice sharing among states, the Commission, utilities, and communications providers, provided that such efforts remain non-binding and do not undermine state authority.

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Passed by the Committee on Telecommunications
Adopted by the NARUC Board of Directors on July 22, 2026