



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF THE  
CHAIRWOMAN

February 22, 2023

The Honorable Shelley Moore Capito  
United States Senate  
172 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Capito:

Thank you for your letter regarding the efforts of the Federal Communications Commission to promote broadband deployment and competition—specifically as it relates to our pole attachment rules and processes. I agree that the Commission should be doing everything it can to speed the deployment of broadband to all areas of the country. Gaining access to poles in a quick, predictable, and affordable way is a key part of that effort. I recognize that this is especially the case in many areas of West Virginia, where the terrain makes deployment through alternative means such as undergrounding particularly difficult and costly.

As you note, last year the Commission unanimously issued a *Second Further Notice of Proposed Rulemaking* that sought comment on questions concerning the allocation of pole replacement costs between utilities and attachers. In particular, we sought comment about whether we need to provide greater clarity around when a pole must be replaced to accommodate new communications equipment, and on other economic and legal issues that may arise with pole replacements. The *Further Notice* also sought comment on whether there are other reforms we can make to speed up the process for negotiations over pole replacements and attachments, because certainty is good both for the providers seeking to build broadband networks and for the electric companies that own most of the utility poles. Commission staff is currently reviewing the record in this proceeding. Please be assured that we will take into consideration the issues and concerns presented by all stakeholders as the Commission deliberates on the appropriate course of action.

Please note that since February 2020, West Virginia regulates pole attachments at the state level. While section 224 of the Communications Act grants the Commission jurisdiction over the rates, terms, and conditions for pole attachments, under section 224(c), a state may preempt Commission jurisdiction over pole attachments if the state files a certification stating that it has rules in place to regulate pole attachments and that, in so regulating, the state takes into consideration both communications subscribers being served by pole attachments, as well as the utility pole owner's customers. In March 2019, the West Virginia legislature preempted Commission jurisdiction over pole attachments by adopting a requirement that the West Virginia Public Service Commission assume jurisdiction over the rates, terms, and conditions of pole attachments in the state and take into account the interests of both communications subscribers

and utility customers. In December 2019, the West Virginia Public Service Commission adopted rules that codified the Commission's pole attachment rules and any subsequent amendments with enforcement and administration of those rules to occur in West Virginia. West Virginia then filed a certification with the Commission in January 2020 announcing its intent to regulate pole attachments at the state level and confirming that it has rules in place to do so and that it considers the interests of the appropriate parties. The Commission issued a public notice in February 2020 announcing the receipt of West Virginia's pole attachment certification. This means that while West Virginia codified the federal rules, the state retains complete authority to deviate from the federal regime to suit the particular needs of West Virginia. However, I recognize that state efforts are often informed by changes we make at the federal level. For this reason, the agency is always willing to engage with our state counterparts working on this issue and would be happy to work with West Virginia in this capacity.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Rosenworcel", with a long horizontal flourish extending to the right.

Jessica Rosenworcel