

Encouraging Broadband Deployment: Removing Regulatory Barriers

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tl;dr

Background: As part of its ongoing debate over infrastructure spending, Congress should consider how to best encourage broadband deployment. Lawmakers have been considering ways to fund deployment, particularly through subsidies to users or providers.

But... As important as it is to [get subsidies right](#), the lowest-hanging fruit to facilitate deployment and adoption of broadband is to reform policies that needlessly impede the construction and efficient operation of broadband services. Chief among those are rules governing pole attachments and eligible telecommunications carrier (ETC) requirements.

KEY TAKEAWAYS

POLE ATTACHMENT REFORM

In order to build out wireline broadband, Internet service providers (ISPs) need access to poles. Most of these poles are owned by local utilities and municipalities. Unfortunately, these entities can charge exorbitant prices to access the necessary inputs. They also often seek to completely offload the cost to replace, repair, and improve poles onto attachers. These practices drive up the cost to deploy broadband, leading to slower deployment and higher prices for consumers.

The Federal Communications Commission (FCC) has authority under Section 224 of the Communications Act to review the rates charged for pole attachments to assure that they are “just and reasonable.” Pursuant to that authority, the [FCC recently found](#) that “utilities throughout the country have disparate and inconsistent practices with regard to cost responsibility for pole replacements.”

The commission declared it unreasonable for utilities to “impose the entire cost of a pole replacement on a requesting attacher when the attacher is not the sole cause of the pole replacement.”

The FCC should consider rulemaking to determine how to allocate pole replacement costs more equitably in order to facilitate broadband deployment.

REMOVING ETC REQUIREMENTS

To access subsidies for “high cost” rural deployment, an ISP first needs to be deemed an “[Eligible Telecommunications Carrier](#)” (ETC) by the relevant state regulator where it seeks to build out broadband. ETCs are permitted to participate in the reverse auctions for rural broadband subsidies conducted by the FCC under the Universal Service Fund (USF). ISPs had to receive the same designation in order to receive [Connect America Fund Phase 2](#) (CAF II) or [Rural Digital Opportunity Fund](#) (RDOF) subsidies, as well.

Receiving ETC designation is an expensive and time-consuming process. It also subjects the ISP to [outdated and burdensome](#) state regulation originally designed to ensure universal telephone service, effectively precluding broadband-only offerings and subjecting designees to state public utility commission oversight. As a result of this regulatory burden, the reverse auctions have received fewer bids from ISPs than they otherwise would.

Former FCC Commissioner Michael O’Rielly has [called](#) for paring back state utility commissions’ authority by creating a uniform national application for ETC status. Congressional proposals such as the [Expanding Opportunities for Broadband Deployment Act](#) (H.R. 3376) would eliminate the ETC requirement to receive federal subsidies. Both approaches could increase the number of ISPs participating in broadband deployment.

CURBING MUNICIPAL RENT EXTRACTION

Local governments can impose barriers to broadband deployment through the abuse of cable-franchising authority. Local authorities have a great deal of power over cable networks once they are installed. While the Cable Act restricts the franchise fees to be paid by operators to 5 percent of the operator’s gross revenues, municipalities have evaded the statute by structuring franchise requirements to mandate in-kind obligations, including free broadband for local government buildings.

As a result, cable operator-ISPs are forced to recoup those costs either by raising prices for consumers or by curtailing network buildout.

The FCC imposed limits on the in-kind benefits municipalities can demand as part of franchise requirements. The 6th U.S. Circuit Court of Appeals [upheld the commission’s order](#), but held that only the marginal costs of providing broadband would apply to the cap.

Congress should update the Cable Act to curb municipalities’ ability to make unreasonable demands on service providers, which ultimately impede the growth of high-speed Internet buildout and adoption.

Wireless providers have faced similar requirements from municipalities. The FCC [limited](#) the use of this authority by permitting fees only to the extent that they are nondiscriminatory and based on reasonable costs. The FCC also adopted “shot clocks” that require municipalities to take timely action on applications for deployment or colocation of wireless facilities. These are positive moves to reduce barriers to deployment that Congress should use as a model—e.g., by attaching similar requirements to funds distributed to states and localities.

For more on these issues, see [ICLE Comments in the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment](#), [ICLE’s Principles for the Future of Broadband Infrastructure](#), and [ICLE Ex Parte on Sec. 621, MB Docket No. 05-311](#).

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