Insight

Broadband Deployment: The Problem with Poles

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Executive Summary

- Congress allocated billions of dollars to subsidize broadband deployment through the Broadband Equity, Access, and Deployment (BEAD) program, but costs associated with access to necessary infrastructure could jeopardize the program's success.
- Broadband providers need access to utility poles to attach wires and equipment, but lengthy negotiations between private pole owners and broadband providers, as well as municipalities and cooperatives charging excessive fees to access poles, add risk to deployment decisions.
- Congress and the Biden Administration should consider changes to BEAD and broadband deployment policies more generally that would streamline broadband deployment, ensuring that the costs associated with buildouts aren't exacerbated by unnecessary fees and delays.

Introduction

Congress has made broadband deployment a national priority, and the Biden Administration is currently in the process of overseeing a historic $42.5 billion infrastructure investment through the Broadband Equity, Access, and Deployment (BEAD) program to connect unserved households to the Internet. Unfortunately, access to necessary infrastructure could jeopardize the program's success.

When deploying, broadband providers must attach wires and equipment to poles owned by the local electric or telephone utility. The rates that pole owners can charge broadband providers are generally regulated by the Federal Communications Commission (FCC) or individual states, but delays to make the pole ready for an attachment could disrupt

deployments. For smaller projects, the make-ready work is subject to specific FCC timeframes, but BEAD has spurred deployments that often need access to thousands of poles, which removes the rule-defined timeframes. Moreover, federal pole attachment rules only govern poles owned by investor-owned utilities, not those owned by municipalities and electric co-ops, which generally charge much higher fees for access to their poles. With high costs and long preparation periods, broadband deployments run the risk of not returning a profit or delays for lengthy periods of time, leaving unserved Americans without access.

Congress and the Biden Administration can seek to address these issues. For example, regulators could impose shot clocks for make-ready work on large pole attachment projects, meaning that the pole owner must make the pole available within a certain timeframe before the attaching utility could turn to a licensed contractor to do the work separately. Regulators should be careful, however, to make sure that any changes do not reduce the reliability and safety of existing infrastructure. Federal regulators could also extend the access rates that apply to investor-owned utilities to municipalities and cooperative poles, a current gap in the federal framework governing pole attachments.

While these topics tend to not receive significant public attention, the bureaucracy of broadband deployment will have a significant impact on the success of efforts to bring high speed broadband to all Americans.

BEAD and the Need for Infrastructure Access

Congress passed the Infrastructure Investment and Jobs Act in November 2021 to spur the development of U.S. infrastructure during the pandemic. The BEAD program, the centerpiece broadband component of the bill, allocated $42.5 billion to the deployment of internet infrastructure to areas unserved by broadband.

While much of this money will go to the actual wires, cables, and workforce needed to install and operate networks, broadband providers will also use the taxpayer funds for a variety of related costs. For example, providers must go through local zoning and construction permitting processes, as well as pay for access to poles on other infrastructure to attach equipment. – all of which add additional costs and delays for deployment. To the extent that these fees, and the timelines associated with the review of applications, can be reduced, more areas will get connected and get connected sooner.

Costs and delays associated with access to utility poles could threaten the success of the BEAD program. Currently, there are two main issues.

Pole Attachment Make-ready Work

Pole owners need time to make ready their poles for the broadband infrastructure. For smaller projects, FCC rules establish a specific timeframe for the pole owner to complete this work and allow the broadband provider to attach. But for projects that include more than 3,000 poles, the FCC rules provide for a negotiated timeline between the pole owner and the attaching party. Many BEAD-funded projects will likely exceed this cap, however.

Pole owners argue that these negotiated times are critical because they allow for pole owners and prospective attachers to plan for the complexities of a project, such as the allocation of a limited workforce and potential permitting delays or supply-chain difficulties. With the limited resources available, pole owners can also use the negotiated timelines to work with the attaching party to plan an efficient workflow, prioritizing the poles the broadband provider is ready to access. Owners also raise safety and reliability concerns, as mistakes in the process could result in disruption for existing services. Finally, for large projects, often the poles are not owned by the same entities and include poles owned by electric cooperatives and municipal utilities, and the pole owners must wait for the work to be performed on adjacent poles to commence the make-ready process on their own poles.

Many broadband providers have raised concerns about this process, however, especially as BEAD funding begins. According to the NCTA, a cable broadband trade association, with negotiated timelines, many utilities "either refuse to commit to reasonable timelines for jobs exceeding the thresholds, or worse, ignore attachers altogether, stalling projects indefinitely." This, in turn, can make negotiations so unpredictable and costly as to deter market entry, an outcome antithetical to the Biden Administration's goal for a successful BEAD program.

The FCC is currently reviewing comments regarding a so-called "shot clock" that would set a deadline for the make-ready work and depart from the negotiated timeline approach for attachment requests that include more than 3,000 poles. If a pole owner fails to complete the necessary work, the attaching party would be able to hire approved contractors to complete the work, outside of the pole-owner's control. This, proponents of reform argue, would not harm reliability or safety, as broadband providers have the same concerns as other parties with interests in the pole – and thus have an incentive to perform quality work – and often the additional work can allow utilities to identify and upgrade currently failing poles, preventing outages or safety problems.

If the FCC doesn't want to make changes to its rules, the National Telecommunications and Information Administration (NTIA) could also work with states for specific changes as they relate to BEAD projects. For example, states that oversee pole attachments themselves could apply shot clocks for BEAD-specific projects or add some other criteria to help improve the speed and certainty of the process. This would alleviate concerns about

provider participation in BEAD due to delays in pole access negotiations.

Pole Attachment Fees for Municipal Poles

The FCC's oversight of pole attachments extends only to poles owned by investor-owned utilities, not poles owned by municipalities or cooperatives. The rates charged for attachments to poles owned by municipalities and co-ops nearly doubles the rates charged by investor-owned utilities. One study, for example, found that, using data from 2017, the average annual pole attachment rate for poles of investor-owned utilities was $6.84 per pole, compared to $15.39 and $14.86 for co-ops and municipalities, respectively. If a broadband provider needed to attach to 5,000 poles for a project, it would cost the provider $42,000 more annually if the poles were owned by electric cooperatives. For BEAD projects already targeting difficult-to-reach communities with limited potential revenues, these costs could be prohibitive.

While problematic in isolation, there is an incentive for the pole owners to charge higher fees when the utility also offers broadband services, as preventing rivals from accessing their infrastructure could give the pole owners a competitive advantage. Though many of the BEAD projects target unserved areas, investment to reach those areas could allow the broadband provider to compete in already served areas, as on margin the additional cost to connect may be lower.

Some states have begun to align these fees with those charged by investor-owned utilities, but Congress could amend the Communications Act to make clear that municipality- and cooperative-owned poles are covered by the same rules that govern investor-owned utilities. The NTIA, through its BEAD administration, could also encourage states to adopt similar rules if Congress fails to act. At a minimum, Congress should ensure that the timelines discussed above, even if the FCC makes no changes, also apply to the make-ready work of municipal and cooperative utilities, adding certainty and uniformity to the process.

Conclusion

The BEAD program could finally bring high-speed broadband connectivity to unserved Americans, but there are challenges to its success. While there are necessary costs associated with pole attachments, federal regulators should work to minimize extraneous costs and add certainty to the process.