



Insight

Broadband Permitting Reform: State and Local Preemption

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Executive Summary

- Americans are using more bandwidth than ever before, and broadband deployers are rushing to build advanced communications infrastructure necessary to meet this growing demand.
- Yet state and local permitting processes—intended to ensure that deployers won't run afoul of zoning, environmental, or historical laws or hinder the use of rights-of-way—can create barriers to broadband deployment through excessive delays and fees.
- To address unnecessary barriers while preserving localities' essential role in managing public rights-of-way, Congress and the Federal Communications Commission are considering proposals to preempt some aspects of state and local permitting authority through deadlines for review and caps on application fees.

Introduction

With the growth in Internet traffic driven by video calls, cloud computing, and artificial intelligence (AI), Americans are demanding more broadband bandwidth than ever before. Internet traffic over [wired](#) and [wireless](#) broadband connections more than doubled between 2019 and 2024. Yet deployers frequently encounter permitting delays and fees that increase costs and slow deployment timelines, ultimately costing consumers through less access, slower speeds, and higher bills.

State and local permitting processes—intended to ensure that deployers won't run afoul of zoning, environmental, or historical laws, or hinder the use of rights-of-way—can create barriers to broadband deployment through excessive delays and fees that increase costs and slow deployment. The Telecommunications Act of 1996 added two sections to the U.S. Code

that limited states and localities from prohibiting or “hav[ing] the effect of prohibiting” the expansion of both wired and wireless communications services, while still preserving state and local governments’ authority to manage public rights-of-way where the infrastructure for such services would be deployed.

Since 2009, the Federal Communications Commission (FCC) has issued a series of rulings and orders clarifying statutory requirements around timely review of wireless infrastructure applications, culminating in an order in 2018 that established clear guidelines for review of applications for small wireless infrastructure. The agency is now considering expanding such guidelines to cover larger wireless infrastructure, as well as wireline communications infrastructure.

Concurrently, Congress is considering several bills that would study or reduce permitting barriers to broadband deployment. Of these bills, the proposed American Broadband Deployment Act (ABDA) is the most comprehensive reform and would codify and expand existing time and fee limits for permit application reviews. To address local governments’ concerns that these requirements could strain permitting office staff and budgets, Congress may wish to reappropriate some of the \$21 billion left over from the Broadband Equity, Access, and Deployment (BEAD) Program to help localities acquire new technology to simplify and speed-up permit application review.

Permitting Broadband Deployment

Both wired and wireless communications infrastructure in the United States is subject to federal, state, and local permitting requirements and processes before providers can build out the wires or antennae necessary to expand service. The review process allows government owners of public rights-of-way to ensure deployers won’t run afoul of zoning, environmental, or historical preservation laws. It ensures companies don’t hinder the use of the right-of-way through deployment and have a plan to redress any problems that arise. The process typically consists of filing an application with the appropriate authority and paying a fee, followed by a review that includes input from both officials and the public. The permitting authority may ask for additional information if an application is incomplete, and then either deny or grant—possibly with further conditions—the application.

The Telecommunications Act of 1996 added Sections 253 and 332 to the Communications Act, both of which forbid state and local governments from prohibiting or “hav[ing] the effect of prohibiting” the expansion of wired and wireless communications services, respectively. Both sections also forbid states and localities from discriminating against different providers, while also preserving state and local governments’ authority to manage public rights-of-way where infrastructure would be deployed. Finally, both sections provide

the FCC with authority to preempt any state or local rules that violate the above. Section 332 further requires state and local governments to make decisions regarding applications for wireless infrastructure “within a reasonable period of time” and further forbids them from regulating radio emissions from wireless infrastructure beyond the FCC’s own rules. In 2012, Congress, through section 6409 of the Middle Class Tax Relief and Job Creation Act, additionally required state and local governments to approve all requests for collocation, removal, or replacement of existing wireless infrastructure so long as the request “does not substantially change the physical dimensions” of that infrastructure.

Despite these laws, state and local permitting processes continue to produce a wide range of outcomes. Many jurisdictions can process applications and issue permits within a few weeks. Others may require multiple kinds of permits for the same project—each with differing timelines and requirements—and take several months, [sometimes stretching beyond a year](#), to complete. Similarly, while some jurisdictions may only charge a single fee of hundreds of dollars to process an application, others frequently charge fees well in excess of the licensing authority’s actual costs in processing applications or recovering costs associated with use of public rights-of-way. These can consist of fees based on the builder’s project costs, fees for use of private easements, ongoing fees based on the completed project’s gross revenue, and fees to renew permits even when no additional work is being performed. Some jurisdictions even charge different fees based on different types of communication technologies, an express violation of the Communications Act. Delays and permitting costs can add [tens of thousands of dollars](#) to deployments and reduce the economic viability of projects. Because [demand for communications services tends to be “inelastic”](#) (that is, consumers are less sensitive to price increases), deployers likely pass these costs on to customers once the project is built (if the delays or fees do not make a project uneconomical to build in the first place).

Excessive delays and fees have effects beyond the residents of localities that impose them. Because communications infrastructure has large upfront costs to build but minimal ongoing costs to operate, deployers (and ultimately customers) benefit significantly from being able to build larger networks that can spread out the cost of investment over more customers. When a neighboring jurisdiction, particularly a larger, more urban locality, slows buildout of communications infrastructure through excessive delays or fees, smaller jurisdictions nearby that may have easier permitting processes [may nonetheless fail to attract investment](#) from communications providers to buildout infrastructure to their residents. This can exacerbate the existing urban/rural divide in broadband availability, as [over half of Americans](#) who lack access to high-speed broadband and wireless service live in rural areas. In short, the reality on the ground in many localities is that excessive permitting delays and fees reduce investment in broadband across the country, leaving consumers with

more expensive and less available options for accessing broadband and other communications services.

Proposals for Permitting Reform

Last year, the FCC began two proceedings to examine state and local barriers to wireline and wireless communications infrastructure deployment. The proceedings may yield updated rules to provide clear guidance on what permitting requirements “have the effect of prohibiting” deployment under sections 253 and 332. Both proceedings are specifically examining delays and excessive fees in permitting, and whether the agency should expand rules on existing wireless and “small cell” wireless communications infrastructure (that is, infrastructure the size of a backpack or smaller) more broadly to other wireless and wireline communications infrastructure. As with the previous rules, the commission is considering “shot clocks” to provide a presumptive limit on how long a locality can take to process an application (with tiers based on the size and complexity of the infrastructure installation) and limiting fees to those “represent[ing] a reasonable approximation of the locality’s reasonable costs” with presumptive safe harbors.

Concurrently, the House Energy and Commerce Committee has advanced the proposed American Broadband Deployment Act. The bill would update Sections 253 and 332 of the Communications Act and section 6409 of the Middle Class Tax Relief and Job Creation Act to codify shot clocks for all communications infrastructure permitting applications, deem any applications that haven’t received a response by the end of the shot-clock period as presumptively granted, and require transparent, nondiscriminatory application fees that are limited to recovering costs of reviewing applications and repairing any damage to public rights-of-way. Notably, the bill retains the Communications Act’s current protection of state and local authority to manage public rights-of-way.

Some local governments [are concerned](#) that shot clocks and fee caps would limit their ability to effectively review applications and have opposed both the proposed FCC rules as well as ABDA. They argue that shot clocks would strain local permitting offices and budgets, and that limitations on fees may leave them unable to recover all the costs they bear in reviewing applications. These are not unreasonable concerns, but they do not negate the need for clear timelines and costs as deployers roll out the next generation of communications technology.

The British Naval historian C. Northcote Parkinson famously [observed](#), “work expands so as to fill the time available for its completion.” The deadlines imposed by shot clocks have proven to shorten processing times. When Congress imposed a shot clock for federal agencies reviewing communications infrastructure permits for federal lands, the

Government Accountability Office [found](#) that average processing time declined by 57 percent between fiscal year 2018—when the shot clocks were enacted—and fiscal year 2022. New technology and systems can help speed up processing, as well. States and localities around the country have [experimented](#) with using AI to speed up processing timelines for permitting applications in a variety of contexts, leading to reductions in processing times by 60 percent or more. Cities that are using AI to process permitting applications not only report faster processing times, but also improved accuracy, fewer errors, and more informed decisions thanks to AI’s ability to quickly extract necessary data and compare applications with historical data. To aid localities in adopting this technology, Congress may consider reappropriating at least part of the \$21 billion leftover from the BEAD Program to help localities deploy this technology for broadband permitting as it considers other reforms.

This new technology could also reduce the costs localities incur in the permitting process, reducing the need for excessive fees and making it easier for localities to recover the costs associated with processing permit applications. These savings will not only help deployers conserve capital for investment in actual communications infrastructure but will also ultimately benefit consumers through lower bills for communications services, as well as localities themselves through increased economic activity and a growing tax base.

Legislative & Regulatory Outlook

Both of the FCC’s proceedings described above are ongoing, albeit at different stages of review. The commission issued a notice of proposed rulemaking (NPRM) in the wireless proceeding in September and is awaiting potential promulgation of a final rule. The wireline proceeding issued a notice of inquiry (a step which often precedes an NPRM) in September. ABDA has been reported out of committee to the House floor, although was pulled from the calendar before it could receive a vote. Given that the FCC proceedings are likely to result in final rules that limit processing times and excessive fees for permits, broadband permitting reform is more of an inevitability than a question. ABDA would provide greater certainty to deployers and regulators at all levels of government, and Congress can address local concerns about permitting capacity by using leftover funds from BEAD to help localities adopt new technology to more quickly and cheaply process permit applications without sacrificing their essential role in managing public rights-of-way.