Comments for the Record

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

JUNE 22, 2022

Comments of Jeffrey Westling[1]

This Second Further Notice of Proposed Rulemaking (FNPRM)[2] comes at a critical time. The National Telecommunications and Information Administration (NTIA) and state governments will soon develop plans to distribute funds from the Infrastructure Investment and Jobs Act (IIJA)[3] to deploy broadband to unserved Americans. This funding, paired with other spending programs like those in the American Recovery Plan Act[4] and the Universal Service Fund,[5] means that states and broadband providers will likely see a significant increase in spending on deployment. However, if unnecessary barriers make it more difficult and costly to participate in these programs and deploy infrastructure more generally, valuable taxpayer funds could be wasted while unserved Americans stay unconnected.

The Commission has done great work streamlining deployment for both wireline and wireless infrastructure, but it shouldn't rest on its laurels. This FNPRM asks critical questions about remaining barriers for networks, specifically regarding pole replacement costs. If the FCC wants to ensure unserved Americans can get connected to broadband, it should reexamine and reform the current rules to more equitably share the costs of a pole replacement when the broadband provider isn't the sole cause of the replacement, especially in rural areas.

Unequitable Distribution of Costs Stifles Broadband Deployment

The FNPRM notes the concern that "attachers are being required to absorb costs that are not caused by their attachments and/or result in attachers assuming financial responsibility for a utility's capital assets."[6] Broadband investment is a risky proposition for providers and many factors determine whether the provider will invest in a given market.[7] If there is no business case for deployment, providers will not invest. And unfortunately, many different barriers unrelated to the costs of materials can make the business case for communities untenable for deployment.[8]

If broadband providers must subsidize the capital costs of utilities, the business case for deployment is weakened. The FCC has a duty to ensure that the costs that broadband providers must pay to replace utility poles accurately reflect the costs they add to the pole owner,[9] and not used to subsidize the replacement of poles that needed replacement already or otherwise upgrading poles and shifting value to pole owners.

For example, the FNPRM asks about a scenario in which a pole owner needs to expand capacity and uses the improvement as an opportunity to upgrade the pole in terms of class or grade.[10] In this case, the pole owner likely would not have upgraded the pole but for the new attachment, but as a result gains significant value in the upgrade and can increase rents from attachments as capacity is increased. Because the new attachment does not

necessitate the upgrade, the FCC should clarify that pole owners benefit from these upgrades, and bear some of the costs of replacement.[11] At the same time, the Commission should ensure these costs are equitably distributed to ensure the attaching party still supports the replacement: The Commission should likewise refrain from discouraging the pole owner from upgrading as improving the pole will likely make it easier for additional providers to attach infrastructure and compete in a given market.

Pole replacement costs are a part of doing business as a broadband provider, and much of the responsibility will inevitably fall on the ISP. Understandably, the FCC cannot eliminate these costs entirely, and they will continue to inhibit deployment of broadband infrastructure. However, the Commission can minimize the impact that replacements have on deployment. If the Commission can more equitably distribute these costs to the parties involved, the business case for deployments to more communities will become viable, especially in rural areas that currently lack any broadband access. As a result, broadband providers will invest more resources into infrastructure deployment, further connecting unserved and underserved Americans to high-speed broadband.

Relationship to Subsidization Programs

In addition to the general policy implications inherent in this issue, the FCC should also approach this proceeding in the context of the larger push to increase broadband deployment on Capitol Hill and in the states. Currently, some estimates suggest that regulators have made available over $800 billion for broadband deployment subsidization.[12] This massive investment targets one key goal: ensuring all Americans have access to high-speed broadband connectivity.

However, just throwing money at the problem without a holistic approach to incentivizing broadband deployment will undoubtedly lead to failure. Poorly run programs can dissuade participation from providers, and shift funds to overbuild networks in areas with existing coverage and where competition already exists. While the FCC and its counterparts at the NTIA, the Department of Treasury, and the states work to implement these programs, the FCC should work in tandem to eliminate barriers to broadband deployment generally to help ensure these programs succeed.

For example, if pole replacement costs are actively preventing carriers from reaching a rural community, subsidy support could allow pole owners to extract larger rents from providers seeking to attach infrastructure and ultimately replace poles. Even if pole replacement costs remain unchanged, unequal distribution of costs will siphon valuable taxpayer funds and instead subsidize utility upgrades. Congress clearly made broadband deployment a key priority, and these costs can and often do work actively against that goal, meaning unserved Americans stay in the virtual dark.

Again, that isn’t to say that pole owners should subsidize the deployment of broadband infrastructure. Pole attachment and replacement costs are a part of doing business for broadband providers, and will be factored into these programs. But the key for the FCC is to make sure that costs are attributed to the correct party. This will ensure that broadband providers do not overpay to replace poles, and can instead use valuable taxpayer funding on actually connecting unserved Americans.

Conclusion

The FCC has a tremendous opportunity to help ensure Americans get access to high-speed broadband. As the record develops, the FCC should carefully consider how cost-shifting may stifle broadband deployment, especially in the context of larger efforts to increase access to unserved Americans. I look forward to working

with you on these issues.

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June 22, 2022

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[2] Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Deployment, Second Further Notice of Proposed Rulemaking, WC Docket No. 17-84 (Mar. 18, 2022) (FNPRM), https://www.fcc.gov/ecfs/search/search-filings/filing/031800499727.

[3] Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021).

[4] Jeffrey Westling, "Ensuring Federal Broadband Spending Connects America's Unserved Communities," American Action Forum (Marc 30, 2022), https://www.americanactionforum.org/insight/ensuring-federal-broadband-spending-connects-americas-unserved-communities/.

[5] Juan Londoño, "The Debate on Universal Service Fund Reform: A Primer," American Action Forum (Jan 12, 2022), https://www.americanactionforum.org/insight/the-debate-on-universal-service-fund-reform-a-primer/.

[6] FNPRM at ¶ 17.

[7] Comments of Jeffrey Westling, Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, GN Docket No. 22-69 (May 16, 2022), https://files.fcc.gov/ecfs/download/53ef3437-d7ff-4af7-8121-ea93dbf9fc11?orig=true&pk=cb77b2ec-1a58-dbc6-139b-ad192cfd5d9b.

[8] Jeffrey Westling, "2020 Broadband Scorecard Report," R Street Institute (Feb. 20, 2021), https://www.rstreet.org/2021/02/10/2020-broadband-scorecard-report/.

[9] *See* FNPRM at ¶ 2.

[10] *Id*. at ¶ 19.

[11] *Id*. at ¶ 23.

[12] Eric Peterson, "There is enough money to close the digital divide. Why is Congress pushing for more?" Washington Examiner (September 21, 2021), https://www.washingtonexaminer.com/opinion/there-is-enough-money-to-close-the-digital-divide-why-is-congress-pushing-for-more.