

# Thinking Creatively About Broadband Infrastructure

To encourage new, local broadband providers, consider easing the regulatory burdens that make starting a new broadband venture costly.

By Tom Sloan

**M**any Americans remain without broadband because no provider can afford the financial and regulatory costs of developing the necessary infrastructure. These residents of broadband deserts generally live in areas in which large incumbent telecommunications companies provide telephone service. Most independent telephone companies throughout the United States have deployed broadband to their customers.

Broadband deployment costs are generally cited as the primary reason rural areas remain underserved. Nonfinancial steps can significantly contribute to facilitating deployment by reducing regulatory hurdles that necessitate duplicative infrastructure corridors.

There are many potential small broadband providers – notably, but not exclusively, public utilities – capable of serving rural residents but that may lack the resources to acquire the necessary easements, regulatory approvals and infrastructure. At least two options come to mind, though both may require state legislative approvals.

## EXTEND EASEMENTS AND FRANCHISES

Rural water districts, rural electric cooperatives, investor-owned electric companies and natural gas pipeline operators all have easements, infrastructures and, in many cases, franchise agreements. Such documents and investments may state that only the original service (such as

water or electricity) is authorized.

If one of those utilities wishes to provide broadband or partner with a broadband provider, each easement and franchise agreement will need to be renegotiated. That is a daunting task. The result is that rights-of-way and infrastructure are underutilized.

For example, the rural water district whose board of directors I chair has several hundred miles of private easements wide enough for the district to park vehicles on when it needs to repair a water leak. The district also has aboveground infrastructure, such as water towers. Natural gas pipeline operations are similar, and electric utilities have even more aboveground infrastructures on their easements, many of which are in public rights-of-way.

A change in statutes permitting utilities to offer broadband services to their customers, or partner with other companies to offer them, would negate the need to renegotiate every easement and franchise agreement. Such legislation would necessarily include language protecting landowners and directing that franchise payments and any easement payments be made. The state of Indiana enacted similar legislation in 2017.

## INSTITUTE STATEWIDE STANDARDS

More than a decade ago, the large telecommunications providers secured legislative approval to enable statewide video franchises in several states. Instead of needing

to negotiate with every municipal government individually, a provider could obtain a video franchise at the state level and pay franchise fees to the local municipalities where it provided service.

Although states do not regulate broadband in terms of quality of service, they may establish statewide standards for siting, pole attachments and other requirements. Many municipalities have siting standards to protect historic or culturally sensitive sites and requirements related to attaching to municipal poles. Although these standards are occasionally controversial and lead to appeals to the Federal Communications Commission, on the whole they are reasonable and accepted by broadband providers.

To minimize costly and time-consuming appeals to the FCC, state legislation could require mandatory arbitration for disputes involving siting, attachment and other fees as well as other matters for which states issue permits. Alternatively, states could direct appeals to the state attorney general instead of the public utility commission so there is no hint of a state's attempting to regulate broadband.

States could take legislative action to provide statewide or regional broadband franchises for unserved and underserved areas. This would provide uniformity of regulation, reduce negotiations and attract broadband providers to bid on serving those state residents.

Neither suggestion will be universally applauded by incumbent telecommunications and broadband providers. However, if the goal of state legislators is to facilitate ubiquitous access to scalable broadband services, it behooves innovative broadband providers to encourage legislators to create the opportunities for investment. Most broadband deployment incentive discussions focus on state and/or federal loans, grants or subsidies. The FCC's Broadband Deployment Advisory Committee's (BDAC) Model State Code Subcommittee addressed both financial and nonfinancial incentive options.

## State legislative changes, such as extending utility easements to cover broadband, could reduce deployment costs for potential broadband providers.

Among the financial options worthy of discussion is requiring companies that deliver products using large amounts of bandwidth (such as Netflix or Amazon Prime) to contribute to the state and federal universal service funds that support broadband. (I discussed this proposal in greater depth in "A Path Forward to Address the Digital Divide" in the March/April 2018 issue of this magazine.)

Of more immediate interest are the Model State Code Subcommittee's recommendations related to reducing the difficulty of deploying broadband infrastructures and service through reductions in bureaucratic and other impediments. The suggestions in this article are in line with those recommendations, which the FCC has not yet formally acted on.

### STRATEGY AND TIMING

Depending on when you read this commentary, it may be too late for legislators to introduce the bills suggested here or others that these ideas may stimulate. However, it is not too early to develop and operationalize a plan for the 2020 legislative session in your state.

To do this, identify key legislators who might be receptive to your suggestions and who are formal or informal leaders within their legislative chambers or committees. Meet with them and show them specific information about how what you propose will result in deployment investments by your company. If the legislator acts, he or she will want assurances that *you* will act.

Build your coalition of supporters among utilities, municipal leaders, customers, legislators and everyone

else you can. Have a unified message and a commitment to support the legislation and deployment when you are successful.

### CONCLUDING THOUGHTS

State legislators are unlikely to initiate the necessary changes without broadband providers' advocating, testifying and building coalitions. Not every public utility will want to be or partner with a broadband provider, and that is all right. But for those that seek additional revenue streams or seek to reduce the population flight from rural areas, access to broadband using existing easements, rights-of-way and infrastructures may be very attractive.

I encourage would-be rural broadband providers to identify and meet with legislators from unserved and underserved regions of their states. Propose solutions, and offer to help build the industry, legislative and public support necessary to enact the desired legislation.

Economics will determine the feasibility of providing broadband service in low-population-density and low-economic-status areas of each state, but innovative removal of impediments to deployment and deployment partnerships can make the difference between an attractive broadband deployment opportunity and the continuation of the broadband desert and the flight of young people. ❖

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*Tom Sloan retired from the Kansas House of Representatives after 24 years of elected service. He was a member of the BDAC's Model State Code Subcommittee and an advocate for ubiquitous broadband availability.*