

Providers, Regulators Vie for Consistent Broadband Permitting

Uncoordinated and slow permitting processes could have a chilling effect on service providers and communities seeking to expand broadband to more homes and businesses.

By Sean Buckley / *Broadband Communities*

As communities and service providers look to meet critical Broadband Equity, Access, and Deployment (BEAD) Program timelines, getting permit approvals has never been more pressing.

Marissa Mitrovich, vice president of public policy for the Fiber Broadband Association (FBA), says that “dysfunctional” permitting processes are preventing more broadband networks from being built promptly because of a lack of cohesion among federal, local and state agencies. “There are too many Americans without access, which hurts [the U.S.] economy,” she says. “Upgrades can’t happen when multiple agencies are engaging and there’s no coordination.”

Cheri Beranek, CEO of Clearfield, agrees and adds that the challenge becomes even greater in a market in which competitors are trying to offer new services. “Because there are hundreds of fiber broadband projects going on today, there’s a supply and demand challenge,” she says. “There is a huge demand for permitting and a lack of supply in the number of people available from these communities [to help process permit requests].”

CONGRESS ACTS

Congress is taking action to help ease permitting processes. Led by House Energy and Commerce Committee Chair Cathy McMorris Rodgers (R-WA) and Communications and Technology Subcommittee Chair Bob Latta (R-OH), Congress held its “Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment” hearing in April.

The hearing featured testimony from representatives from various industry advocacy groups: Michael Romano, executive vice president, NTCA—The Rural Broadband Association; Michael Saperstein, senior vice president of government affairs and chief strategy officer, Wireless Infrastructure Association (WIA); Michael O’Rielly, president, MPORielly Consulting; Louis Finkel, senior vice president of government relations, National Rural Electric Cooperative Association (NRECA); and Ernesto Falcon, senior legislative counsel, Electronic Frontier Foundation (EFF).

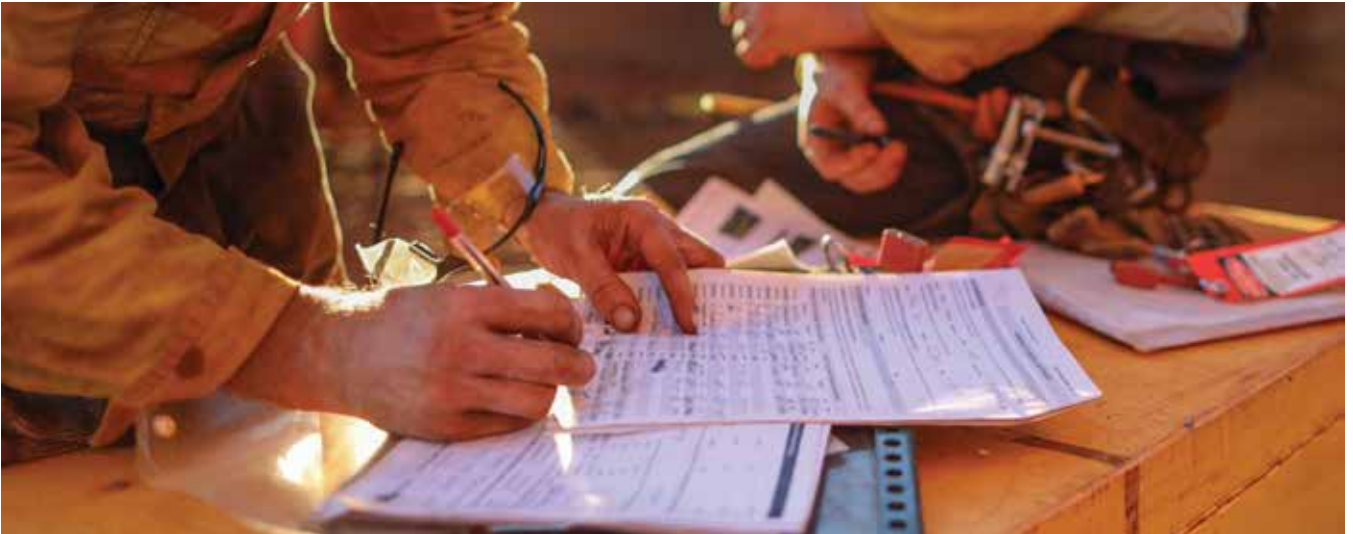
In May, the Energy and Commerce Committee advanced seven bills to streamline broadband permitting, expedite deployment and reauthorize the FCC’s Spectrum Auction Authority.

“To deploy broadband, providers need to go through burdensome permitting processes at the federal, state and local level, and the time to receive approval on a permit can range from several months to several years,” McMorris Rodgers said in a statement. “Our legislation would cut the red tape and ensure this money can quickly reach rural, unserved Americans.”

Advocacy groups participating in the hearing raised concerns regarding shortened review timelines and costs. The EFF pointed out that the costliest parts of deploying networks are the sunken costs that come with public works and rights of way, making up about 60–80 percent of network deployment. “With fiber optic infrastructure, getting it right the first time will provide a community with capacity that will last for decades because future advancements in speed will only require changes in hardware, not additional construction,” said Falcon. “Understandably, shot clocks with deem-granted provisions are attractive and the EFF has heard of certain instances [in which] a city or incumbent pole owner is dragging their feet on approving a permit even for routine matters.”

Another critical issue the hearings emphasized was reducing costs for providers. Railroad crossings have been a costly factor in permitting processes. NTCA shared that one of its members sought to install fiber in a public right of way adjacent to a state highway that intersected with a railroad crossing at a single point. Initially, the railroad line quoted the provider to place fiber beneath 15 feet of the railroad line along a state highway for \$19,000. The costs included a permit fee, an application fee, an “engineer mobilization” fee, and \$2,500 for a flagger/observer – in addition to costs needed for additional insurance beyond that otherwise carried for the project.

NTCA’s Romano said these costs were just for the railroad crossing fees and did not include network construction. “Ultimately, the intervention of a local economic development



The permitting process would be easier – especially for small providers – if one primary agency oversaw permitting processes.

office helped in reducing the fees to \$12,000 – and, after all this process and cost, the fiber was deployed for the 15 feet under the railroad crossing along the state highway without ever touching the railroad assets,” he said.

CALLING FOR COORDINATION

When providers build networks, particularly those that cross local and federal lands, getting approvals and timelines coordinated between different agencies is challenging.

EFF’s Falcon advocates streamlining the permitting process. He said that an ideal scenario, particularly for smaller providers, is to work with one primary agency that can oversee the permitting process.

“[Small providers] would benefit significantly if it were clear there was some ‘lead’ agency responsible for the timely permit resolution,” he said.

Members of NRECA and NTCA cited various examples of cases in which there is a need for coordination on federal permitting. NRECA’s Finkel said that the existing federal permitting process is too long and costly and an “impediment” to broadband providers trying to serve consumers and communities. “The federal environmental review and permitting process must be modernized to give

more certainty and predictability as electric cooperatives and other internet service providers build networks to connect homes, families and communities across the country,” he said during the Congressional hearing.

He pointed out that National Environmental Policy Act (NEPA) regulations are a crucial issue for NRECA members. He said the

regulations often delay projects and drive up costs for electric cooperatives deploying broadband in rural areas. Several rural communities NRECA member cooperatives serve are located near federal lands controlled by the Department of the Interior, U.S. Forest Service, or Army Corps of Engineers.

Finkel said a lack of consistency in reviewing permits caused delays

MINIMIZING UTILITY DISRUPTION

Though more efficient timelines for permits is undoubtedly a key priority to expanding fiber and broadband, timelines can’t be so rushed that buried existing utilities – gas and electric – are put at risk. According to Common Ground Alliance’s (CGA) Damage Information Reporting Tool (DIRT) Report, the annual rate of damages to buried infrastructure in the U.S. has remained stagnant for most of the last decade. It costs the U.S. a staggering \$30 billion yearly. Each of the hundreds of thousands of dig-ins to underground utilities that occur annually can cripple communities and businesses by cutting them off from critical services, causing injury or death.

CGA’s “50 in 5” challenge aims to address damages to critical U.S. assets head-on by bringing damage prevention advocates together around a targeted set of strategic, data-driven priorities. The “50 in 5” call-to-action encourages the damage prevention industry to concentrate on critical issues identified by CGA’s Next Practices Initiative and the top damage root causes that contribute to more than 76 percent of damages to buried infrastructure (according to CGA’s most recent DIRT Report): consistent use of 811; critical excavator practices; and accurate, timely location of utilities.

that dissuaded some providers from bringing broadband to rural areas. “[Though] all major federal property managing agencies can use the SF-299 as the common application form to authorize permits for communications facilities, these federal agencies have different missions, rules and regulations governing private use of their public lands,” he said. “Even within the agencies themselves, co-ops have experienced differing application of the rules when dealing with one regional or state office over another.”

NTCA’s Romano agreed and added that NEPA poses challenges for its rural provider members. Rural providers often must install fiber under roads that touch a Bureau of Land Management (BLM) or Forest Service property. This is because rerouting even small portions of a project in a rural area poses challenges, including the possibility of encountering impassible terrain and obtaining easements on privately held land.

“Members sometimes recount delays of up to two years to obtain permissions

through the environmental, historic preservation, and consultation processes involved with NEPA and [National Historic Preservation Act] NHPA,” Romano said. “Indeed, even if a project touches federal land for only a short distance as part of a larger deployment – or not at all in some cases – the entire project can still be delayed by the need to obtain approvals for the part under an agency’s purview.”

BOOSTING EDUCATION, STAFFING

Given that the number of requests for permits will continue to rise as BEAD Program allocations are disbursed, more staff will be needed to process permitting applications.

Falcon said that workforce issues remain a challenge to speeding up permitting processing timelines. “The lion’s share of the challenge is likely [caused by] the lack of resources and staff available to process the volume of incoming requests,” he said.

One NTCA member company in a large Western state shared that the BLM had only two staff people to process applications. “As tens of billions of dollars flow into much-needed broadband deployment efforts in the next few years, the workflows to review permit applications likely will become more overwhelming and could lead to even greater delays and costs,” said NTCA’s Romano. “We must ensure that these agencies and offices have the resources and skill sets needed to meet this demand.”

Government agencies also need more staff to facilitate communication between permitting offices and agencies. Romano said NTCA members report that “communication with permitting offices and agencies can fall silent for long periods regarding the status of applications or what else might be needed to deem an application ‘complete,’ despite repeated inquiries by providers and their engineers and contractors.”

POLE POSITION: FAIR POLES ACT GETS MIXED RESPONSE

Access to permits is only one part of getting broadband to more homes and businesses. Existing and emerging providers need fair access to utility poles. Congress recently introduced the Fair Access to Internet Ready Poles Act (aka FAIR Poles Act), which will revise the Communications Act of 1934 “to provide that the exception for certain persons from the definition of the term ‘utility’ for purposes of the requirements relating to pole attachments does not apply to such a person who receives certain Federal broadband assistance, and for other purposes.”

The proposal has drawn praise and criticism from broadband and utility advocacy groups.

INCOMPAS sent a letter to the FCC urging the agency to move forward on the current poles proceeding to ensure a fair process for allocating costs for pole replacement and expediting disputes to deploy networks. “Our members typically pay between \$6,000 to \$30,000 to replace one pole,” said INCOMPAS CEO Chip Pickering. “This severely limits their resources and causes them to either adjust their deployment plans or not extend their

networks as far as possible.”

However, American Public Power Association (APPA), National Rural Electric Cooperative Association (NRECA), and Utilities Technology Council (UTC) argue in a joint letter that the FAIR Poles Act could have a detrimental effect on cooperatives participating in programs such as BEAD and ReConnect to deploy fiber broadband networks in high-cost rural areas.

“If the FAIR Poles Act were enacted, it would dissuade electric cooperatives from participating in recently created federal programs to support broadband infrastructure deployment in high-cost rural areas,” said Louis Finkel, senior vice president for government relations at the NRECA. “Cooperatives are some of the most willing entities to bring broadband to those hardest-to-reach and most expensive communities. Rather than foster competition and spur development in unserved rural areas, it is unlikely that requiring the use of the FCC rate for pole attachments would be enough to incentivize others to build in these high-cost, low-density areas.”

CONGRESS ADVANCES MULTIPLE BILLS TO EASE BROADBAND PERMITTING

The U.S. House of Representatives Energy and Commerce Committee advanced seven bills in late May it said will streamline broadband permitting to expedite deployment and extend spectrum auction authority:

- H.R. 3309, the Standard Fees to Expedite Evaluation and Streamlining Act (aka the Standard FEES Act), sponsored by Reps. Gary Palmer (R-AL) and Patrick Ryan (D-NY), was reported favorably, without amendment, to the House by a vote of 50-0.
- H.R. 3293, the Expediting Federal Broadband Deployment Reviews Act, sponsored by Reps. Jeff Duncan (R-SC) and Angie Craig (D-MN), was reported favorably, without amendment, to the House by a vote of 51-0.
- H.R. 3299, the Deploying Infrastructure with Greater Internet Transactions and Legacy Applications Act (aka DIGITAL Applications Act), was reported favorably, without amendment, to the House by a vote of 51-0.
- H.R. 3283, the Facilitating the Deployment of Infrastructure with Greater Internet Transactions and Legacy Applications Act (aka Facilitating DIGITAL Applications Act), sponsored by Reps. Mariannette Miller-Meeks (R-IA) and Debbie Dingell (D-MI), was reported favorably, without amendment, to the House by a vote of 51-0.
- H.R. 3343, the Federal Broadband Deployment Tracking Act, sponsored by Reps. August Pfluger (R-TX) and Darren Soto (D-FL), was reported favorably, without amendment, to the House by a vote of 51-0.
- H.R. 3565, the Spectrum Auction Reauthorization Act of 2023, sponsored by Reps. Cathy McMorris Rodgers (R-WA) and Frank Pallone, Jr. (D-NJ), was reported favorably, as amended, to the House by a vote of 50-0.
- H.R. 3557, the American Broadband Deployment Act of 2023, sponsored by Rep. Buddy Carter (R-GA), Nathaniel Moran (R-TX), and Neal Dunn (R-FL), was reported favorably, as amended, to the House by a vote of 27-23.

FBA's Mitrovich agrees that though more emphasis on training and hiring more people to process permits is needed, the submission process also must be updated. Today, in many cases, service providers must submit paper forms. "FBA would love to see some of our members apply electronically," she says. "We need another option for many people to have an electronic way to submit forms."

COLLABORATING WITH COMMUNITIES

As service providers continue to push into new communities, they seek to find common ground with towns and cities as partners. Google Fiber, for one, was an early pioneer in working with cities and towns to iron out license agreements and get permitting elements in place in exchange for delivering its fiber broadband service.

Still, the reality is that franchising and permitting processes vary by community.

Lumos Networks, which is expanding its fiber presence in Virginia

and North Carolina, has poised itself as an overbuilder to bring fiber to underserved communities. For example, the provider recently inked a deal to bring fiber internet to Johnston and Harnett counties in North Carolina. Through partnerships, Lumos said it plans to be a community corporate citizen, bringing residents economic development and connectivity.

Derek Kelly, vice president of market development for Lumos Fiber, says the best approach is to work with communities to understand their needs best. "The franchising looks different in each state and can even look different from city to city," he says. "South Carolina has a pretty favorable regulatory climate because there are guardrails on what cities can and can't do, and we figure out what's important to the city and how it can help us."

He emphasizes that Lumos works with communities as a partner. "We don't want to dump too much work on them, but working together is the best way to navigate the permitting process."

Ting echoes that perspective. Since launching in Charlottesville, Virginia,

in early 2015, the nationwide internet service provider has grown and operates in seven states nationwide.

By crafting a detailed plan with a community, Ting can ease the permitting process. "We work with a city to refine plans and then review the detailed plans to create a backlog of approved permits so that we take the pressure off of both Ting and the municipality," says Jason Smith, vice president of Ting Internet. "It is better to spend an extra month or two getting a plan in place." 🙌



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