

**Testimony of Louis Finkel**  
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**United States House of Representatives, Committee on Energy and Commerce**

Legislative Hearing on Unleashing U.S. Communications Innovation

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Chairman Latta, Ranking Member Matsui, and Members of the Subcommittee. Thank you for inviting me to testify today. My name is Louis Finkel and I serve as the Senior Vice President for Government Relations at the National Rural Electric Cooperative Association. NRECA is the national service organization for more than 900 rural electric cooperatives that provide electric service to approximately 42 million people across 48 states. Rural electric cooperatives are member-owned, not-for-profit, and formed to provide safe, reliable electric service to their member-consumers at the lowest reasonable cost. They have a longstanding commitment to improving the communities in which they serve, and many are actively engaged in rural economic development efforts.

Today, more than 200 electric cooperatives are involved in rural broadband deployment efforts, recognizing the impact that a reliable high speed internet connection can have on their communities and the challenges of deploying this infrastructure in low density, rural, and remote areas. For many cooperatives, the story of rural broadband deployment today mirrors the story of rural electrification nearly 100 years ago. The cost of building and maintaining networks in sparsely populated areas with difficult terrain is prohibitive for many providers. It's a cost intensive process with little return on investment. Since cooperatives are owned by the people they serve, they truly understand the need for broadband in these areas and the challenges associated with deploying this infrastructure, which is why some have chosen to expand their services to include broadband.

**Permitting Reform is Needed**

Permitting reform is a timely and welcome discussion, and an issue that greatly impacts the rapid deployment of broadband infrastructure in rural areas. The existing federal permitting process takes too long, is too expensive, and is an impediment to the ability of broadband providers to meet the needs of their 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. On behalf of NRECA and America's Electric Cooperatives, I want to thank you all for your thoughtful consideration of these issues and your efforts to streamline rural broadband infrastructure deployment across the United States.

The National Environmental Policy Act (NEPA) regulations present a significant challenge to rapid infrastructure deployment, often delaying projects and driving up costs. Co-ops face NEPA requirements when seeking a variety of federal permits, approvals, and financial assistance, such as access to power line rights of way on federal lands. In some instances, NEPA has been applied differently by federal agencies.

For example, when a cooperative in Colorado won a USDA ReConnect award to provide broadband service, they planned to use existing electric infrastructure for the project and did not anticipate any permitting problems. However, the project sought to cross land managed by the U.S. Interior's Bureau of Land Management (BLM), which required full oversight and review of the proposed USDA funded infrastructure project simply because the project involved broadband service rather than electric service. The project in question was utilizing the same right-of-way and the poles that provide electric service to the same communities. As a result, the co-op was required to undergo an expensive, time consuming, and onerous permitting process through BLM that added months of delay and an unanticipated, and unbudgeted, \$800,000 to the project. For electric service improvements, the existing rights of way are sufficient, and the co-op can upgrade their facilities without the added time and expense. But because this co-op was attaching broadband infrastructure to their existing poles in the existing right of way, BLM treated the project as a greenfield build which triggered a full environmental review.

In many instances, existing rights of way and easements only apply to electric service and not to broadband, which impacts not only cooperatives deploying broadband but any electric utility seeking to lease out excess fiber capacity to third-party telecommunications providers. Many cooperatives are including fiber to support electric operations or implement smart grid technologies. Fiber installed to support electric operations is typically allowed in electric utility rights of way, but if a co-op leases excess fiber to a third party for retail broadband, or chooses to provide retail broadband themselves, it could trigger a violation. Often, the utility must renegotiate the right of way or easement agreement with each state or federal agency, local jurisdiction, or private landowner, which can take years and can cost millions of dollars.

Similarly, the various federal agencies' rights of way permitting process often treats broadband deployment projects like a commercial service, and those projects are not given the same expedited treatment afforded utility services. Cooperatives on more than one occasion have been told by environmental specialists at the U.S. Forestry Service that it can take up to 270 days to review a broadband deployment permit application when using existing poles in existing rights of way, despite having existing permits for electric service on the same poles in the same rights of way. Working with the Army Corps of Engineers also presents challenges, as crossing Army Corps managed lands or accessing easements is a cumbersome and lengthy process with no easy solution. Cooperatives have run into issues with the Corps' non-recreational outgrant policy, which requires the project to either have no viable alternative or provide a direct benefit to the government to begin receiving consideration. In many instances, projects have been forced to build around Army Corps managed land, which adds significant costs and delays to project completion, because obtaining the easement from the agency is too difficult or expensive.

Improving coordination amongst federal agencies when it comes to permitting is a simple and commonsense step that can alleviate many challenges to rural broadband deployment and reduce both delays and costs to these projects. Many rural communities are located near federal lands controlled by agencies such as the Department of the Interior, U.S. Forest Service, or Army Corps of Engineers. While 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. Even within the agencies themselves, co-ops have experienced differing application of the rules when dealing with one regional or state office over another. Similarly, duplicative reviews by federal agencies for broadband infrastructure placed on

existing poles in existing rights of way only serve to drive up costs and slow down delivery timelines. In some instances, these barriers serve to dissuade providers from extending service to rural areas.

Streamlined approaches to actions that are known to have minimal environmental impacts, such as aerial broadband deployment on existing electric infrastructure, will not only reduce the paperwork required, but it will allow agencies to focus their time and resources on proposals that truly do have a significant environmental impact.

It should be noted that numerous issues with rights of way and easements also exist at the state level. Many state laws and existing agreements would not allow electric easements and rights of way to be used for broadband without renegotiating with each property owner.<sup>1</sup> To date, about 18 states have adopted such laws to make easements and rights of way more compatible with broadband expansion, but issues remain in states that have not adopted these laws.

Finally, ensuring that the national broadband maps are accurate and truly reflective of realities on the ground is vitally important to rapid deployment of this critical infrastructure across the country. The new Broadband DATA Maps at the FCC are a significant improvement from the previous census-block level maps, but it's clear that numerous errors and inaccuracies still exist. We understand that the maps are iterative, but the short timeline between the release of the pre-production draft maps and the forthcoming announcement of state BEAD allocations by NTIA leaves little time for challenges to be resolved. Congress should provide flexibility for states to use their own maps and local knowledge in addition to the FCC's national broadband maps in determining eligible locations for BEAD funding. Without that flexibility, rural families and communities could miss their opportunity to receive a broadband connection through this historic funding.

### **Policy Proposals Before the Committee**

We appreciate the Committee's desire to continue building on recent discussions around permitting reform, and some of the proposals discussed today are a step in the right direction toward alleviating many of the barriers cooperatives and other providers face when working with federal agencies. The Reducing Barriers for Broadband on Federal Lands Act would create exemptions from NEPA and National Historic Preservation Act (NHPA) requirements for broadband projects on federal lands. This would be helpful in expediting many broadband deployment projects across federal lands, especially in situations where existing poles and rights of way are being leveraged.

Similarly, the Facilitating DIGITAL Applications Act would improve the transparency of the federal permitting process by establishing a portal for federal agencies to accept and process Form SF 299 common applications forms would be a benefit.

The Connecting Communities Post Disaster Act would streamline the ability of a provider to replace or improve a communications facility after a major disaster. We appreciate the spirit of the Wildfire Wireless Resiliency Act, which allows similar rebuilding and hardening of this infrastructure after a wildfire, and look forward to working with Members of this Committee to ensure that all broadband infrastructure can be included under this provision.

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<sup>1</sup> Easement Clarity Would Help Texas Co-ops Deliver Broadband, by Cathy Cash, April 2019, available at <https://www.electric.coop/easement-clarity-would-help-texas-co-ops-deliver-broadband>.

## **Cooperative Pole Attachment Rates Are Not a Barrier to Rural Broadband Deployment**

As electric utilities, cooperatives own and maintain utility poles and rights of way for the safe and reliable distribution of electricity to their members. Ensuring the safe, affordable and reliable delivery of electricity is the first priority for every electric cooperative. When space and capacity allow, co-ops lease out excess space on their poles for the delivery of telecommunications services by third party providers, or even their own broadband subsidiary. This relationship provides communications companies with access to an existing pole distribution network for a small fraction of the significant costs that co-ops have incurred to build and maintain these systems. The fees charged to attach to co-op poles reflect the unique geographic and demographic characteristics of each co-op's service territories, which can vary from state to state and co-op to co-op.

Co-ops charge cost-based rates depending on several factors, including population density and geographic terrains within their service territories. Cooperatives must also consider certain factors as they review requests for pole attachments to ensure the safety, reliability, and resiliency of the electric grid. Federal and state regulations, including the National Electrical Code and the National Electrical Safety Code encompass everything from minimum line clearances to acceptable pole wind, ice, and weight loads, and can even dictate where attachments can be placed on a pole. In some instances, a taller or stronger pole is needed to accommodate new requests for attachments.

The same economic factors that dissuaded for-profit electric companies from extending service to rural areas in the 1930s exist today to dissuade for-profit communications companies from providing broadband in these same areas. The cost of building and maintaining these networks in sparsely populated areas with difficult terrain is prohibitive for many providers. It is a cost-intensive process with little return on investment. In fact, several federal and state entities have determined that the most challenging barrier to rural broadband deployment is low population density.

In a 2019 report <sup>2</sup>, the Congressional Research Service (CRS) stated that the overriding factor for broadband expansion is customer density, adding that rural terrain and remoteness contribute to the problem. Similarly, a 2019 Issue Brief released by the U.S. Small Business Administration found "the current gap between rural and urban areas in internet access parallels earlier gaps in electrical and telephone access. Each technology relied on an infrastructure that made access more costly in areas with lower population density."<sup>3</sup> It is important to note that neither of these reports cite pole attachment costs as a barrier to deployment.

Electric cooperatives work in good faith to negotiate reasonable rates for pole attachments so that the burden of financing rural broadband deployment does not unfairly fall on rural electric customers. On average, electric co-ops serve 7 customers per mile, compared to approximately 34 customers per mile served by larger investor-owned utilities. Rural, high-cost areas require more pole and wires to serve a small customer base from which they can recoup the higher deployment costs.

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<sup>2</sup> <https://crsreports.congress.gov/product/pdf/RL/RL30719/101>

<sup>3</sup> Issue Brief: Accessing the Internet in Rural America, Daniel Wilmoth, Research Economist, Office of Advocacy, U.S. Small Business Administration, November 15, 2019, p. 11, available at: <https://cdn.advocacy.sba.gov/wpcontent/uploads/2019/11/07105617/Rural-InternetAccess.pdf>.

Many cooperatives have started deploying broadband in their service territories in large part because no one else will do it. Much like the 1930s, when electric cooperatives were the providers of last resort for many unserved rural communities, the same holds true today related to broadband connectivity. Since cooperatives are owned by the people they serve, they truly understand the need for broadband in these areas and the challenges associated with deploying this infrastructure. The one-size-fits-all approach that some in the industry would like to see implemented, and that the so-called “FAIR Poles Act” would implement for co-ops who participate in certain recent federal broadband programs, does not accurately reflect the unique cost of building and maintaining a pole distribution network in low density, hard-to-reach rural areas that can differ from state to state and co-op to co-op.

### **There’s Nothing Fair About the FAIR Poles Act**

If the FAIR Poles Act were enacted, it would dissuade electric cooperatives from participating in recently created federal programs aimed at supporting broadband infrastructure deployment in high-cost rural areas. 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. And, with existing prohibitions on overbuilding already in place, other entities would be unable to access any additional federal support for areas in which a co-op accepts federal funding, meaning the other entity would have to finance the high cost of deployment themselves.

Furthermore, many of the broadband programs that would be impacted by the FAIR Poles Act have already closed their application windows and begun to disburse funding. The Rural Digital Opportunity Fund auction was conducted in December 2020, the FCC has approved many of the long-form applications, and providers have begun to receive funding. The American Rescue Plan Act was passed in March 2021, with flexibilities for some of the funds to be used for rural broadband deployment. Many cooperatives have partnered with their states or local communities to use assistance from Treasury’s State and Local Fiscal Recovery Funds or Capital Projects Funds.

Many programs created by the Infrastructure Investment and Jobs Act have also begun or are about to begin disbursing funds. For example, NTIA’s Enabling Middle Mile Broadband Infrastructure Program, which would provide \$1 billion in grant funding to expand and extend middle mile infrastructure in rural areas, had an application deadline of September 30, 2022. The agency intends to start making funding announcements in the coming weeks, and numerous co-ops or partnerships involving co-ops submitted funding applications. Similarly, USDA accepted applications for Round 4 of its ReConnect Program, which received close to \$2 billion in funding through IIJA, from September 6 to November 2, 2022. USDA began making Round 4 awards earlier this month.

For many cooperatives seeking to build out broadband infrastructure in their service territories, adoption of the FAIR Poles Act would unfairly change the rules of the game after providers have already gone through the complicated and costly process of applying for federal funding.

### **Conclusion**

The complicated federal permitting process becomes even more challenging when multiple federal agencies are involved, and lengthy reviews coupled with unclear timelines and administrative burdens only add to the challenges and frustrations of dealing with the federal government.

Rural electric cooperatives are deeply committed to bridging the digital divide and connecting rural homes and businesses with reliable broadband service. I appreciate the opportunity to share the cooperative perspective on broadband permitting reform, and your attention to this important and timely issue. NRECA and the nation's electric cooperatives look forward to working with this Committee and others in Congress to address these issues and close the digital divide once and for all.