



**Statement of Michael O’Rielly
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Before the House Energy and Commerce Committee
Subcommittee on Communications and Technology
Hearing Entitled, “Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment”
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Good morning. Thank you, Subcommittee Chairman Latta, Ranking Member Matsui, and Members of the Subcommittee for calling this important hearing and for including me as a panelist.

By way of background, from 2013 to 2020, I was one of five commissioners (sometimes three) at the Federal Communications Commission and was actively involved in nearly every issue before the agency, including differing means to extend and expand broadband networks to all interested Americans. Previously, I proudly served as a staff member in both the Senate and the House. It is a pleasure to return to this institution where I started my professional career as a staff member on the committee. I am currently President of MPORielly Consulting Inc., a small consulting firm that works with a select list of telecom and technology firms. Although some of my clients may have an interest in this hearing, I alone prepared my testimony to reflect my views and experience on the topic.

From the outset, let me strongly extend my support to the package of bills (minus one or two) and the underlying issues that are the subject of today’s hearing. While I won’t comment on each bill, I appreciate and applaud the Subcommittee’s attention to ease the broadband permitting process and address the necessary component of pole attachments. In several instances, I do believe that the legislative effort, particularly as it relates to pole attachments, should go much further. I look forward to an assemblance of these bills working through the legislative process in the near future and stand ready to assist the Subcommittee in any way I can.

A Critical Imperative to Act

For multiple decades, policymakers rightfully have declared it U.S. policy that all Americans should have access to broadband service. The Covid pandemic reaffirmed and strengthened the benefits broadband service brings to our society and individual families. It's one reason that approximately \$100 billion in direct Federal funds will be invested in broadband networks over the next few years. Despite changing definitions of speed and capacity requirements over time, the charge has remained constant: bring private sector broadband offerings to every unserved household in our nation. And this view has been widely supported by both political parties in multiple presidential administrations and in House and Senate leadership even amid changing majorities.

Just in the last few weeks, I participated in two events in which I was heartened to hear Biden Administration officials wholeheartedly endorse permitting reform and outline additional action they intended to take for that purpose. First, NTIA Administrator Alan Davidson recently spoke publicly about the necessity of permitting reform, and its compatriot pole attachments, to effectuate his agency's broadband funding grants, the Broadband Equity, Access, and Deployment (BEAD) grant program. Additionally, he remarked that the agency was reviewing ways to condition its grants on commitments to improve state and local permitting by recipients. While I may not favor using such a conditional approach, which could possibly be outside the statute, the urgency and importance of rectifying this issue was appreciated. Second, just last week U.S. Commerce Deputy Secretary Don Graves expressed his view at USTelecom's American Connectivity Forum that permitting reform was at the top of the list in terms of activities the Department was reviewing, in coordination with NTIA, to facilitate broadband expansion.

From my vantage point, Members of the Subcommittee should consider three activities to improve broadband availability and bring service to those American households without. While significant funding has already been appropriated through various federal programs, the Subcommittee

should be extremely diligent in conducting oversight over how these funds are being spent or eventually will be spent. Making so much funding available at once increases the likelihood of overall waste, fraud, and abuse, and the pernicious effects of subsidized overbuilding should be of deep concern. Similarly, as broadband access expands through these programs, there remains a need to address overall affordability. I have made the case that championing added funding for the Affordable Connectivity Program (ACP), which is likely to exhaust resources mid-next year, should be a priority by Subcommittee Members, even among those more fiscally conservative.¹

The most immediate need for the Subcommittee's attention is to improve the process by which broadband companies must go through to actually build and deploy broadband networks. Weaving through the layers of approval and required payments, as necessary, has a direct impact on private broadband providers' timing, architecture, costs, and more for network builds – be they wireline or wireless systems. By the same token, inefficient and costly permitting and pole fee requirements extend build timelines, raise overall costs, reduce willingness to participate in state and federal programs, alter bids submitted, and waste broadband company resources.

Sadly, these are not new issues. For decades, permitting and pole attachments procedures and rates have stymied progress in the communications arena. At Congress' direction and reflecting the need to promote deployment, the FCC has acted in numerous proceedings to alleviate the barriers – occasionally pushing its statutory boundaries to the edge, which often resulted in tortuous litigation over the agency's jurisdiction. But with the proposed bills before the Subcommittee, Congress can affirm the Commission's authority in certain instances and grant other agencies or the courts authority to remove these barriers. If the ultimate goal is to get broadband access to those unserved Americans,

¹See "A Conservative Case for the Affordable Connectivity Program," The Hill, February 2, 2023 [Affordable Connectivity Program needs permanent funding | The Hill](#)

this effort – if sufficiently broad and comprehensive -- can remove a known and legitimate set of obstacles to deployment.

Permitting

The current fixation with fiber broadband as the preferred broadband network component by certain federal officials under federal funding programs will have an impact on state and local permitting. Specifically, a portion of these new fiber routes, as well as fiber connecting wireless communications towers and antennas, will be buried underground. This is likely to be hundreds of thousands of miles of fiber that all will need to be approved whenever it uses state or local lands, easements, rights of way and the sorts or needs overall governmental approval to dig and lay fiber within an area. This has the potential to be a major bottleneck in broadband deployment to reach the last five to seven percent of locations nationwide.² Thus, improvements to these processes, such as those contained in the draft “BROADBAND Leadership Act” and other draft bills, would be helpful and could be expanded further.

I also wish to raise a related issue to wireline permitting. The process that private railroads use to permit crossings by broadband companies is borderline predatory. The State of Virginia has led legislation to curtail the exceptionally long timelines, estimated at multiple months, and outrageous fees sought by the select railroads. Dating myself, I remember when this Committee had jurisdiction over railroad matters, and I suggest that the Subcommittee should consider expanding the state reforms to cover all states.

Likewise, the U.S. cannot be a global leader in wireless connectivity without necessary upgrades to the existing wireless infrastructure. Using higher frequency spectrum bands, for instance, requires denser network architecture and the installation of additional antennas and towers. This will be

² This is a rough estimate that is likely elevated above the actual unserved population.

especially true for 6G wireless offerings, likely to operate in both midbands and high bands. Moreover, the role of wireless broadband offerings to meet unserved and underserved households will increase – despite the Administration’s rejection of the BEAD program’s statutory technology neutrality mandate. To build and sustain these networks as demands increases means the construction and installation of thousands of new towers and antennas.

Yet, creating modern wireless networks and meeting consumer wireless needs can require approval from a multitude of government entities. Over the years, these procedures have proven extremely difficult and time-consuming for the private sector to navigate in many instances. In particular, the siting of towers and antennas, be they large or small cell, has generated unnecessary opposition from certain groups for various reasons, and operators have run into processes that are outdated, based outside of reason or fact, and/or downright discriminatory. Application costs have also been a major issue.

Accordingly, the Subcommittee’s assistance in this area would be invaluable. Streamlining Federal siting provisions and codifying recent efforts of the Commission, such as timelines/deemed approved procedures, application fee amounts, minimizing upgrade approvals needed, and addressing environmental and historic preservation, would go a long way towards securing a wireless future and short-circuiting endless litigation. Additionally, a number of bills under consideration would address the wireless siting procedures on Federal lands. Given the benefits that wireless networks bring for public safety and convenience, I personally have little sympathy for aesthetic concerns raised over towers or antennas.

Pole Attachments

Although new broadband maps are still in the process of being completed, we do know from past mapping efforts that many of the locations without broadband service are located in more rural,

less dense areas. Given the economics of these areas, it is highly unlikely that a new broadband entrant can afford to obtain the necessary land rights, procure the supplies, and install new poles to deploy its network. Simply put, an additional pole network is not in the cards. That means, broadband entrants will continue to seek use of the existing pole infrastructure. But the underlying process to obtain access to these poles strains credibility and the rates being charged far exceed established norms. In some instances, depending on who owns the poles, there may be competitive reasons at work to prevent new entrants from establishing service. Except in certain circumstances, it is also unreasonable for reasons of cost, time delays, terrain, etc. to assume that broadband providers simply can bury all physical lines. Overall, this situation is untenable.

The current pole attachment structure is generally governed by Section 224 of the Communications Act. That provision, which has worked somewhat well through the years, was the result of political compromises, given the various forces at differing times. While the FCC has adopted implementing rules and subsequent enhancements, such as adjusting the rate formulas and simplifying the process for attachers, a main impediment is an exemption in current law for municipal systems, cooperatives, and non-utilities. The scope of the exemption nationwide is exceptionally large, covering almost one hundred million poles. This problem becomes magnified when the realization occurs that a great deal of BEAD funding will likely go to states located in the Southern portion of America and receive power service from utilities distributing power generated by the Tennessee Valley Authority (TVA).

To the extent that this exemption ever made substantive sense, I join many parties in asserting that it no longer does. Defenders of the exemption argue that the applicable entities need to maximize fees given the economics of their systems and there are unique concerns, such as safety and reliability, for these systems' poles. These arguments, however, fall apart under the most rudimentary review. There is nothing special about these poles as opposed to non-exempt ones, such as neighboring ones owned and operated by non-exempt entities. Moreover, the FCC is fully capable of exploring, and

addressing, if necessary, any special health and safety issues arising over these discrete poles. In terms of extraordinary fees, the Commission during my time moved away from a rural/urban distinction for poles rates. I posit that using high pole attachment rates as a cross-subsidization mechanism for the exempted party is no longer appropriate. To the extent necessary, the Commission could explore and consider such a circumstance, if the exemption were removed.

One of the bills being discussed today would effectively apply Section 224's regime to exempt entities that are or become recipients of certain federal broadband subsidy programs. This would be an improvement and certainly seems justifiable given that these entities would be entering the broadband marketplace using Federal funds. At the same time, this bill's applicability may be too narrow to deal with the current pole exemption problem. Consider that it is highly likely that some non-exempt entities will win federal funds for areas covered by pole owners currently exempt. In these instances, the bill wouldn't provide any assistance for the respective area, leaving the winning broadband provider at the mercy of the current ineffective system. Moreover, exempt entities may have partnerships that could escape the bill's reach.

Fundamentally, the exemption should be deleted. At a minimum, the bill's scope should be expanded to apply in all unserved and underserved areas. Otherwise, there may be opportunities for gamesmanship and unfair maneuvering by exempt entities that prevent broadband service from reaching needy households.

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As is its history, this Subcommittee has put a great spotlight on a needed area for attention in the communications space to enable broadband service expansion to reach all Americans. Without necessary attention, Federal broadband funding and the related projects will get unnecessary delayed or bogged down. Worse yet, the funding will ultimately cover fewer households than expected, leaving

households outside of the digital revolution. Legislating on this subject to address abuses or incompetence of the permitting and pole attachment fee mechanisms is necessary and prudent.