

Six Things States Can Do to Promote Private Sector Investment in Broadband

Dozens of local governments have tried to build out broadband networks over the years. These massively subsidized efforts attracted corruption, did not deliver on promises, and where they did not fail outright, had to be propped up with even more tax dollars.

The private sector, on the other hand, has invested \$1.7 trillion in the reliable state-of-the-art networks we have today, resulting in 94% of Americans having access to high speed internet. It is clear that the private sector is best positioned to bring access to the unserved 6%. The government just needs to get out of the way."

- Grover Norquist, *president of Americans for Tax Reform*

The coronavirus pandemic has highlighted just how much can be accomplished with connectivity.

Hundreds of millions of Americans have been able to work and learn from home, visit their health care providers without going into a doctor's office, and video chat with family and friends in other parts of the country.

Thanks to [\\$1.7 trillion](#) in investment from the private sector, the reliable, state-of-the-art networks that make all of this possible are available to [94%](#) of Americans, with 80% being able to access Gigabit speeds.

While this is great news, ensuring the remaining 6% of unserved Americans gain broadband access is still a priority for all. Here are six things state lawmakers can do to unleash private sector investment in those communities. Some of these reforms may even result in lower costs for consumers:

1. Eliminate the Tax on Capital Expenditures for Communications and Cable Equipment

Many states impose a variety of taxes on Internet Service Providers (ISPs). These taxes inhibit their ability to invest in new and existing broadband networks and result in higher costs for consumers.

For example, more than half of states impose sales taxes on capital expenditures for wireless, wireline, and cable network equipment and facilities, and several more states impose sales taxes on capital expenditures for at least one of these categories. To put the consequences of these costs in perspective, a 2019 report by Raul Katz and Fernando Callorda, *Assessment of the Economic Impact of Taxation on Communications Investment in the United States*, concluded that if all states were to repeal these capital expenditure taxes alone, total communications network investments would increase across the country by 9.04%, or nearly \$4 billion a year!

Adding insult to injury, taxing capital expenditures for wireless, wireline, and cable network equipment and facilities – a business input – is also poor tax policy. In general, the taxation of business inputs leads to tax pyramiding, encourages vertical integration, hides the true tax burden from taxpayers, and ultimately results in higher prices for consumers. For these reasons, it is a practice that is widely opposed by economists and tax policy experts.

One way for states to promote private sector investment in broadband is to join the 13 states that have sales tax exemptions for capital expenditures on wireless, wireline, AND cable network equipment and facilities. This reform and other efforts to reduce ISP tax burdens would allow for more direct investment in the development and expansion of networks into unserved rural areas, or necessary maintenance and upgrades to networks in more densely populated urban and suburban areas.

2. Lower Franchise Fees and Other Rights-of-Way Access Fees

Local governments charge ISPs rights-of-way access fees. These fees and the associated compliance costs amount to billions of dollars a year that could have otherwise been used to lower consumers' monthly bills or invested in unserved communities.

For example, for their use of the public rights-of-way, federal law permits local governments to charge cable operators and their customers franchise fees of up to 5% of cable service revenues. When franchise fees were first imposed more than three decades ago, they were intended to help local governments recover the costs associated with rights-of-way usage.

But now, applying the same 5% rate to today's more advanced, highly competitive video market has resulted in cities bringing in revenues that far exceed rights-of-way usage costs. Moreover, most cable infrastructure has been in the rights-of-way for at least 30 years and its disruption is minimal. There is no justification for keeping this antiquated approach.

Just because the federal government allows cities to charge 5% of cable service revenues does not mean states have to stand for it. Missouri, for example, introduced a [bill](#) that would have limited the 5% franchise fee to only the first \$20 of a monthly cable bill. If implemented, this would have been a great step towards making the franchise fee more accurately reflect the cost of being in the public rights-of-way.

Missouri's bill and related efforts to modernize the franchise fee or other rights-of-way access fees are another way for lawmakers to attract investment from the private sector, as it would signal to ISPs that they will not be treated as merely a source of revenue for unrelated budget items. And more importantly, such reforms would also result in lower monthly bills for consumers, who often bear the burden of these fees in the form of higher prices.

3. Streamline Permitting Processes and Other Regulatory Hurdles

Broadband deployment is routinely stifled by permitting delays and a number of other regulatory hurdles at the state and local levels. Ultimately, these barriers shut out competition and make it harder for providers to roll out newer, faster networks.

For example, the fifth-generation wireless network (“5G”) – which consists of smaller, but more densely packed cells that are attached to light poles and other city-owned infrastructure – is taking longer to deploy in many parts of the country than providers and consumers would like. Too often, gaining access to public rights-of-way and receiving approval of cell siting applications is a costly, overly complex, and slow-moving process.

Such barriers are not unique to 5G networks. Next generation WiFi networks and the expansion of hybrid fiber-coax and fiber-optic lines face similar regulatory issues.

This red tape and the associated costs – both direct and indirect – ultimately result in companies spending their resources in other areas where government is less confiscatory and friendlier to private sector investment.

To address these problems, a number of states, including [Arizona](#) and [North Carolina](#), have passed laws that streamline and speed up these zoning and permitting processes for 5G, and others, such as [Indiana](#), have also capped the related costs and fees. As these states have found, removing these regulatory barriers that inhibit small cell deployment has resulted in greater investment from the private sector. States could build upon this by crafting similar legislation for other types of networks.

4. Make Pole Attachments Less Costly and Complicated

The main way broadband providers deploy service to customers, particularly in hard-to-reach rural areas, is by connecting or attaching to existing utility poles. It has long been recognized that a duplicative network of poles throughout the country is inefficient and would substantially raise costs for consumers and broadband providers alike.

For these reasons, the Federal Communications Commission (FCC) governs the terms and conditions – including the rates and fees – associated with attachments for communications and broadband companies in many states. These laws and rules, however, do not apply to poles that are owned by municipalities or telephone and electric cooperatives.

Exempting municipalities and cooperatives from pole attachment requirements has resulted in a number of negative consequences, especially in places where these entities are “competitors” in the industry. For example, there is an incentive for municipalities and cooperatives to maximize the costs of pole attachments – be it by blatantly charging excessive and anti-competitive attachment rates or by making the terms and conditions of attachment exceedingly difficult, such as requiring companies to pay unnecessary pole replacement or maintenance costs – to discourage competitors from using their poles to deliver services.

As explained by the American Legislative Exchange Council (ALEC), pole attachment requests “should be welcomed, even encouraged, with rates that are reasonable and designed to encourage greater broadband rollout, not rates designed to benefit the local co-op, municipal electricity company, or government broadband provider.”

States could address this problem by aligning the terms and conditions for attachments on poles owned by municipalities and cooperatives with the FCC’s guidelines. The Georgia General Assembly took a step in that direction this year when it passed a [bill](#) that would allow the Public Service Commission to regulate electric co-op pole attachment rates for wired broadband.

Georgia’s bill and similar efforts to reduce the costs and complexities of pole attachment will result in more investment and competition from the private sector, and thus bring more choices, better service, and lower prices to consumers.

5. Say No to Government-Owned Networks (GONs)

Over the years, dozens of [cities](#) and even some states have believed that they could successfully make it in the broadband space only to learn the hard way that they lacked the expertise and resources necessary for such a massive undertaking.

For example, [KentuckyWired](#), the statewide GON that is currently being constructed in the Bluegrass State, was sold to taxpayers as a \$350 million project that would be complete by the spring of 2016. Now, years past the original date of completion, only half of the network has been installed, none of it is usable, and a report from the state auditor concludes that taxpayers will end up wasting around \$1.5 billion on this redundant network over its 30-year life.

In addition to the clear financial risks at stake, GONs also deter investment from the private sector. Unlike government, private sector providers cannot charge consumers below the cost of service because it would drive them out of business. As if control of the permitting process and possession of regulatory authority were not enough of an advantage, government “competitors” would also be able to charge consumers artificially low rates since they can subsidize costs with tax dollars.

Such “competition” discourages private providers from expanding and investing in areas where GONs are present, as their odds of success would be hindered by unfair competition from an entity that does not need to turn a profit.

State lawmakers across the country can protect taxpayers from being left on the hook for a failing network while also promoting investment from the private sector by saying no to GONs.

6. Put Guardrails Around Broadband Funding Programs

In some instances, lawmakers have created funding programs that are intended to make broadband deployment in certain parts of the country more economical. Where these programs exist, it is of the utmost importance that they include guardrails that will protect taxpayers, promote fair competition, and ensure the program’s objectives are truly met.

Here are some principles that state lawmakers should be sure to apply to any broadband funding program:

- Broadband funding programs should be designed as one-time grants for a project, not an endless stream of money.
- Grants should not be used to overbuild existing broadband networks; they should only be awarded to build out in truly unserved areas. States should set clear standards for what is considered “served” and “unserved” up front to avoid manipulation and should include a challenge process to help ensure that government funds are directed to those areas most in need.
- Awardees should have 1) significant experience in broadband deployment, 2) the financial ability to see a project through to completion, 3) skin in the game, and 4) be committed to deploy infrastructure that is scalable to higher speeds.
- Grants should be awarded through a competitive, reverse auction process that is technology neutral and recognizes that a range of broadband technologies may be appropriate.
- Grant programs should be laser focused on deploying broadband and should not be used as a way to achieve other unrelated extraneous policy objectives.

These guardrails will ensure tax dollars are used efficiently, while also promoting fair competition among private sector providers, who are most capable at building out and maintaining state-of-the-art networks.

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