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**American Broadband Deployment Act Would Speed Up Buildout Efforts**

by

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On June 26, the Biden Administration [announced](#) allocations of \$42.45 billion for deploying affordable, reliable, high-speed broadband services through the Broadband Equity, Access, and Deployment (BEAD) Program. Speed in actually deploying to unserved and underserved areas will be key to the program's success. But there is serious concern that state and local regulatory processes for approving construction of broadband infrastructure will undercut the program by slowing subsidized buildouts beyond any other factors causing delay.

The [American Broadband Deployment Act of 2023](#) – H.R. 3557 – provides an opportunity for Congress to ensure that those subsidy dollars achieve their purpose by reducing unreasonable permitting delays. It should be promptly enacted.

Cable modem, fiber, and 5G wireless networks offer U.S. consumers and business enterprises significant improvements in bandwidth, speeds, and reliability compared to older-generation technologies. In order to seize the full economic and social benefits of these next-generation broadband services, physical infrastructure needs to be in place. Fiber lines, antennas, and other facilities must be timely built, particularly in rural and other non-urban settings where broadband Internet connectivity is lacking or spotty.

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But efforts to expand broadband access to Americans in unserved or underserved areas are often stymied by unnecessary bureaucratic delays and excessive costs in processing permit applications for constructing and upgrading broadband infrastructure. And with \$42.45 billion in federal subsidies now being allocated for broadband buildout through the BEAD Program, the opportunity costs posed by local permitting process delays will be magnified. To maximize the return for those subsidies, Congress should take action to ensure that high-speed service is rapidly deployed to Americans in unserved and underserved areas.

The American Broadband Deployment Act of 2023 includes several provisions that would reduce federal, state, and local regulatory regulations and cost barriers to timely network deployment. Among them, the Act would set specific timeframes by which state and local government agencies must either accept or deny permit applications for constructing new broadband facilities or substantially modifying existing ones.

Under the Act, state and local governments would have a 150-day "shot clock" in which to decide on permit applications to deploy new fiber infrastructure. A 90-day "shot clock" would apply to permit applications for substantial modifications to existing infrastructure. For infrastructure supporting cable broadband networks subject to local franchise agreements, 90-day and 150-day "shot clocks" would apply to permit applications, depending on circumstances. And for small personal wireless structures, 60-day and 90-day "shot clocks" would apply to permit application decisions for non-substantial modifications to existing structures and new facilities, respectively.

Importantly, the American Broadband Deployment Act provides a speedy remedy when state or local governments fail to make permit application decisions within "shot clock" timeframes. Under the Act, permit applications would be "deemed granted" upon state or local governments' receipt of written notice of their failure to act in time. This remedy would enable broadband providers to move swiftly in constructing or modifying infrastructure, rather than requiring providers to incur additional needless delays and costs in challenging government inaction in court. And a "deemed granted" remedy is constitutionally sound policy. As the Fourth Circuit determined with regard to Section 6409(a)'s "deemed granted provision" in [Montgomery County, MD v. FCC](#) (2015), such a remedy relies on the preemptive force of federal law and does not require state or local government officials to affirmatively issue permits.

Additionally, the Act would require state and local governments to publicly release written explanations for denial of broadband infrastructure permit applications on the day such decisions are made. Written statements of the reasons for permit application denials are essential for meaningful judicial review, and Section 332(c)(7) of the Telecommunications Act of 1996 already requires them. But nothing in current law requires that those reasons be provided at the time when written denials are released. This enables local governments to withhold disclosure of the reasons for denials for undetermined periods of time. Same-day public release requirements for written notices would ensure transparency and prevent state and local governments from adding to delays by releasing denial explanations several days or weeks after reaching decisions.

A [resolution](#) adopted by the U.S. Conference of Mayors at its meeting held on June 2-5, 2023, is wrongheaded in stating that same-day public release of written explanations would be "a virtually impossible task because such written decisions typically require the examination and analysis of evidence presented to local council." An accurate assessment of the matter was offered by the Supreme Court in [T-Mobile South, LLC v. Roswell, Georgia](#) (2015). Interpreting Section 332(c)(7)'s

requirement that local governments must provide reasons when denying cell phone tower siting applications, the court wrote: "We stress... that these reasons need not be elaborate or even sophisticated, but rather... simply clear enough to enable judicial review."

Moreover, the Conference of Mayors' resolution is wrong in stating that American Broadband Deployment Act would preempt "virtually any local government decision not to allow the installation of a proposed wireless facility at a provider's request." Under the Act, state and local governments retain authority to deny permit applications and to defend their decisions in court or before the FCC. The bill primarily is directed toward local government delays and refusals to make any decision at all. Aside from "shot clocks" and "deemed granted" relief, the bill addresses local government indecision by expressly prohibiting local moratoria on processing of permit applications. Such moratoria have been used by some local governments in attempts to indefinitely prolong permit application reviews and thereby halt infrastructure projects.

The pro-deployment infrastructure policies contained in the American Broadband Deployment Act – [H.R. 3557](#) – would be a significant improvement over existing law and FCC regulations. And statutory codification of "shot clocks," "deemed granted" relief," and same-day written explanations would preclude a future Commission from repealing them. The House Energy and Commerce Committee's approval of the measure on May 24 of this year significantly boosted the bill's chances of becoming law. The Senate should act promptly to ensure the success of the BEAD Program by passing the bill and reducing regulatory obstacles to speedy infrastructure build-out.

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### **Further Readings**

Andrew Long, "[Wasteful Duplication by Design: A Case Study on Overlapping Federal Broadband Subsidies](#)," *Perspectives from FSF Scholars*, Vol. 18, No. 19 (May 8, 2023).

Andrew Long, "[FCC Broadband Map Paves the Way for BEAD Grants, Better Oversight](#)," *Perspectives from FSF Scholars*, Vol. 17, No. 61 (December 2, 2022).

Andrew Long, "[Absent Oversight, the Broadband Funding Faucet Likely Will Overflow](#)," *Perspectives from FSF Scholars*, Vol. 17, No. 58 (November 10, 2022).

Michelle Connolly, "[NTIA's BEAD Program Needs Revisions to Succeed](#)," *Perspectives from FSF Scholars*, Vol. 17, No. 50 (October 3, 2022).

Seth L. Cooper and Andrew Magloughlin, "[The FCC Should Preserve and Expand Its Broadband Infrastructure Reforms](#)," *Perspectives from FSF Scholars*, Vol. 17, No. 30 (June 8, 2022).