ISSUE BRIEF

Pole Replacements—A Reasonable Cost of Doing Business

ANTI-COMPETITIVE COST-SHIFTING

Poles have always been a basic cost of doing business when it comes to broadband deployment. Now, cable companies want their market rivals to bear these costs for them.

Building broadband in rural areas is challenging and expensive. Reasonable and timely access to pole attachments that help bring fiber to communities is an essential component of this work. USTelecom members experience this cost of doing business both as owners of poles and attachers to poles owned by others. The rules governing the process have been in place for decades, with critical reforms made by the FCC in 2011 and 2018.

In rare cases, a new pole is necessary when there is no space left to attach equipment to an existing pole. When this occurs, the FCC rules are clear: the company in need of the new pole is responsible for its cost. This "cost causer" principle makes sense. Otherwise, pole owners who have no need for a new pole and who already paid 100% of the cost to put the existing pole in the ground would be forced to pay for the costs caused by its competitor's deployment, rather than investing that capital in new infrastructure elsewhere.

Now, some companies, led by the cable industry, that accepted FCC funds to deploy into rural areas are seeking to change the rules to shift the cost of building new poles required for *their* deployment onto others. This is particularly problematic when the pole owner is a competing broadband company.

This self-serving proposal will not "remove a barrier to deployment" or "speed deployment" as proponents claim. It simply shifts a well-established cost of deployment from companies newly committing to serving rural areas to companies that have invested in rural communities for decades.

WHY IS THIS SUDDENLY AN ISSUE?

In December 2020, the FCC announced the winners of the Rural Digital Opportunity Fund (RDOF), a reverse auction in which companies bid to serve homes lacking broadband access. Those who pledged to meet the minimum performance standards at the lowest subsidy level won the RDOF support.

Some winning bids were made by companies that substantially underbid competitors with significant experience serving rural markets. Some praised their ultra-low bids as an example of a successful auction, saving taxpayer dollars. For others, these bids raised eyebrows. They were made by companies new to serving rural markets; would their deployment math add up?

Since successful bidders are expected to contribute their own investment, in addition to public funds, the FCC asked RDOF winners to certify they have sufficient financing in place to meet their deployment commitments. Suddenly a pole replacement crisis was born.

A Reversal of Cable Industry Policy

Before seeking to shift its deployment costs to competitors, the cable industry supported the longstanding FCC rule that the company in need of a new pole, pays for the new pole. We couldn't agree more with this 2017 filing from NCTA, the cable industry's national trade association:

"If a proposed attachment requires make-ready or a stronger pole, the new attacher should be responsible for covering those costs, just as existing operators were responsible for prior make-ready and pole replacements."[1]

THE BACK-UP PLAN: DOUBLE DIPPING INTO FEDERAL FUNDS

In addition to asking policymakers to force competitors to pay their pole replacement costs, companies that underbid for RDOF funds have been lobbying Congress, federal agencies and states to allow them to tap into additional federal funds from the Infrastructure Investment and Jobs Act to cover pole replacement costs for their RDOF-funded projects.

The problem with this approach? Pole replacements are a routine cost of doing business. Every company that bid in the RDOF auction was, or should have been, well-aware of these costs *before placing their bids*.

Allowing RDOF winners to access additional infrastructure funds to cover their existing commitments takes resources away from unserved communities still waiting on connectivity funding. It also undermines the FCC's auction process and the many broadband companies that bid rationally and in good faith to do this important work in their communities.

If companies are permitted to "low-ball" bids with the confidence they can get supplemental taxpayer funding down the road, the auction process will reward those who game the system and camouflage the true cost of their proposed approach to taxpayers.

THE BOTTOM LINE

While it may be understandable that the cable industry would ask policymakers to force competitors to pay their bills and taxpayers to offset the costs of their low-ball RDOF bids, policymakers must reject these self-serving requests when they clearly do not serve the public interest. Granting these concessions would be unfair to taxpayers and to broadband companies that play by the rules. Most important, such a diversion of public funds would lead to fewer unserved and underserved Americans receiving broadband.

There are many productive ways state and federal agencies can work with broadband companies to achieve our nation's shared goal of universal connectivity. Covering the spread for companies that gamed the RDOF auction process is not one of them.

ENDNOTES

1 https://www.fcc.gov/ecfs/file/download/DOC-57548c6a61800000-A.pdf?file_name=071717%2017-84%2017-79%20Replies.pdf