

# **Will Ideology Block Opportunity? Regulatory Reform in the Infrastructure Industries**

**John W. Mayo \***

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\* Professor of Economics, Business and Public Policy, McDonough School of Business, Georgetown University, and Executive Director of the Georgetown Center for Business and Public Policy.

## I. INTRODUCTION

It is no secret that the United States is politically fractured. Citizens have increasingly retreated or have been drawn to information streams that identify different profound problems facing the country and which offer vastly different solutions.<sup>1</sup> This tendency creates and reinforces knee-jerk resistance to policy proposals from the opposition political camp. Democrats often reflexively reject Republican proposals, and Republicans similarly and with equal speed reject out-of-hand policy proposals offered by Democrats.

In some cases, this political polarization is based on fundamental and substantive grounds that stem from profound ideological differences. In such cases, proposals for policy change fail to gain traction or end in stalemates.<sup>2</sup> Even in the rare instances where the roughshod politics of the stronger party prevail to advance a policy, the results remain vulnerable to the likelihood of reversal in the event that the influence of the politically stronger group falters.<sup>3</sup>

While this ideological standoff is disheartening, it need not bring policy progress to a halt. Indeed, in the realm of regulatory reform, a number of practical opportunities exist to improve economic welfare, and careful consideration of those opportunities points toward considerable agreement, if not consensus among policymakers of all political stripes. These opportunities create a potential path for practicality to forge agreement, even in the face of widespread ideological discord across American society.

This basic thesis is no more evident than in the set of infrastructure industries that policymakers across the political spectrum have identified as crucial for U.S. competitiveness in the 21<sup>st</sup> century. As a case in point, this paper will focus on broadband technologies (both wired and wireless), which policymakers of all political stripes have identified as crucial for

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1. See generally Jessica Taylor, *Republicans And Democrats Don't Agree, Or Like Each Other — And It's Worse Than Ever*, NAT'L PUB. RADIO, INC. (Oct. 5, 2017), <https://www.npr.org/2017/10/05/555685136/republicans-and-democrats-dont-agree-dont-like-each-other-and-its-worst-than-eve>.

2. Among many examples, consider the lack of legislative progress on gun control and immigration in recent years.

3. Consider, for instance the political back-and forth over so-called net neutrality at the Federal Communications Commission in recent years that has been prompted by changes in the majority position of either Republicans or Democrats.

economic growth.<sup>4</sup> In the specific case of broadband, there is little to no disagreement that numerous regulatory policies touch upon, and may be constraining, the deployment and adoption of broadband in the United States.<sup>5</sup>

## II. THE PRACTICAL NEED FOR REGULATORY REFORM IN THE BROADBAND COMMUNICATIONS SECTOR

Any discussion of forward-looking regulatory policies governing broadband infrastructure should begin with three widely agreed to premises. First, broadband deployment enhances Americans' personal lives and stimulates productivity and economic growth.<sup>6</sup> Second, next-generation broadband networks will require massive capital investments.<sup>7</sup> Third, the

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4. In political discussions of the policy imperatives for the broadband sector, some have emphasized the need to remove artificial impediments to greater deployment while others have tended to emphasize the need for affordable broadband. See John Eggerton, *House Digs Into Broadband Infrastructure*, MULTICHANNEL NEWS (Mar. 21, 2017), <http://www.multichannel.com/news/telco-tv/house-digs-broadband-infrastructure/411648> [<https://perma.cc/B3CP-LXAT>]. While creating a nominal difference, these different points of emphasis are, from an economic perspective, not distinct. Specifically, policy measures designed to enhance the supply of broadband will inevitably put downward pressure on price, which in turn, promotes the affordability of broadband services. To the extent that even with generally affordable broadband, some households may find broadband too expensive to purchase. An efficient policy of targeted subsidies to enhance demand (such as through the Connect America Program) can supplement policies designed to enhance supply.

5. Numerous policy dockets are in progress at the Federal Communications Commission that address the potential impacts of regulatory policies on the deployment and adoption of broadband. See generally, *ECFS Most Active Proceedings*, FCC, <https://www.fcc.gov/rulemaking/most-active-proceedings> (last visited Apr. 18, 2018).

6. See, e.g., ACCENTURESTRATEGY, SMART CITIES: HOW 5G CAN HELP MUNICIPALITIES BECOME MORE VIBRANT 1 (2017), <https://www.ctia.org/docs/default-source/default-document-library/how-5g-can-help-municipalities-become-vibrant-smart-cities-accenture.pdf>; see also David Sunding, Martha Rogers & Coleman Bazelon, *The Farmer and the Data: How Wireless Technology is Transforming Water Use in Agriculture*, at 2 (April 2016), [http://files.brattle.com/files/7336\\_the\\_farmer\\_and\\_the\\_data\\_-\\_how\\_wireless\\_technology\\_is\\_transforming\\_water\\_use\\_in\\_agriculture.pdf](http://files.brattle.com/files/7336_the_farmer_and_the_data_-_how_wireless_technology_is_transforming_water_use_in_agriculture.pdf) (showing how farmers can leverage advanced wireless technology to preserve resources in droughts and optimize watering levels); JEFFREY T. MACHER, JOHN W. MAYO & OLGA UKHANEVA, *DOES THE INTERNET IMPROVE HEALTH BEHAVIORS AND OUTCOMES? EVIDENCE FROM THE NATIONAL HEALTH INTERVIEW SURVEY* (2016), <https://ssrn.com/abstract=2756388> (showing the effect of the internet on health behavior and outcomes).

7. According to USTelecom, total broadband industry capital investments for wireline, wireless, and cable totaled \$1.6 trillion between 1996 and 2016. See PATRICK BROGAN, *BROADBAND INVESTMENT CONTINUES TRENDING DOWN IN 2016*, at 1 (2017), <https://www.ustelecom.org/sites/default/files/documents/Broadband%20Investment%20Trending%20Down%20in%202016.pdf>. In 2016, broadband investments totaled \$76 billion with 43% of spending by the wireless industry, 35% by the wireline industry, and 22% by cable. Looking forward, Accenture Strategy estimates that telecommunications firms may invest \$275 billion over the next seven years to deploy next generation wireless broadband facilities. See ACCENTURESTRATEGY, *supra* note 6, at 1.

investments necessary to produce widely-deployed next-generation broadband infrastructure in the United States will be provided almost exclusively by the private sector.<sup>8</sup>

Given these basic premises, regulatory policies governing the broadband sector take on additional importance. Specifically, in addition to the traditional role of consumer protections afforded by regulation, it is essential that modern regulation be fashioned to complement and accelerate the deployment of next-generation broadband networks. Indeed, with the rapid growth in demand for mobile and fixed broadband services, the economic fact is that failure to enable infrastructure buildout will produce an array of maladies ranging from elevated prices to reduced quality. These realities, in turn, require a careful review of the regulatory structure governing broadband communications, especially regulations pertaining to broadband infrastructure. It is important to note, however, that such a review and consequent reforms should be driven not by the ideological distaste for regulation so often championed in political discourse, but rather by the practical possibilities that regulatory reforms could accelerate America's efforts to deploy and adopt 21<sup>st</sup> century broadband. Both individuals' personal lives and the United States' competitiveness would benefit from such reforms.

The potential for practical regulatory reform is especially promising in the modern broadband sector. This is for several reasons. First, the regulations governing the communications sector were largely established within an environment of monopolistic provision of communications services, which starkly differ from the 2018 marketplace.<sup>9</sup> Through the passage of the Telecommunications Act of 1996 ("Telecommunications Act"), the telecommunications industry has evolved rapidly into an

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8. Despite the widespread embrace of a public infrastructure initiative to contribute to the deployment of next-generation broadband infrastructure, it is apparent that the Trump Administration will not allot substantial federal funds toward this goal: "Providing more Federal funding, on its own, is not the solution to our infrastructure challenges. Rather, we will work to fix underlying incentives, procedures, and policies to spur better infrastructure decisions and outcomes, across a range of sectors" See OFFICE OF MGMT. & BUDGET, FACT SHEET 2018 BUDGET: INFRASTRUCTURE INITIATIVE 1 (2017), [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/fact\\_sheets/2018%20Budget%20Fact%20Sheet\\_Infrastructure%20Initiative.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/fact_sheets/2018%20Budget%20Fact%20Sheet_Infrastructure%20Initiative.pdf). For a more general discussion of the fiscal challenges facing public funding of infrastructure projects, see *Improving Infrastructure Outcomes through Better Capital Allocation*, MCKINSEY & CO. (Nov. 2017), <https://www.mckinsey.com/industries/capital-projects-and-infrastructure/our-insights/improving-infrastructure-outcomes-through-better-capital-allocation?cid=other-eml-alt-mip-mck-oth-1711>.

9. See *The History of the Federal Communications Commission (FCC)*, MITEL, <https://www.shoretel.com/history-federal-communications-commission-fcc> (last visited Apr. 18, 2018).

ecosystem in which effective competition is the norm.<sup>10</sup> Competition among broadband providers has increasingly taken on characteristics in which firms race to deploy next-generation facilities that have more bandwidth, and provide higher quality at greater speeds and at lower prices.<sup>11</sup> In such a Schumpeterian environment, it is especially important to be aware of the potential for existing regulations to slow innovation and the time-to-market deployments of next-gen broadband facilities.<sup>12</sup> More fundamentally, where consumers are protected by competition (and the general protections afforded by the United States' agencies enforcing competition policy, such as the Federal Trade Commission<sup>13</sup>), some regulations that would otherwise be necessary for consumer protection are no longer required.

Second, in some cases, regulations that govern the communications sector were designed to be congruent with particular point-in-time technologies.<sup>14</sup> But the technologies that provide modern communications are stunningly different than those employed only a few years ago.<sup>15, 16</sup> Consequently, it would seem incontrovertible that technology-specific regulations that were established to govern the wireline provision of plain-old-telephone service ("POTS") are unlikely to advance economic welfare in a world in which consumers increasingly turn to wireless smartphones to handle an array of voice, data, and video communications services. Similarly, arduous regulations governing large macro-cell antennas to support cellular service become deterrents to the rapid deployment of much more densely-packed, but substantially smaller, micro-cell antennas that are

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10. For a detailed discussion of the evolution of "effective competition" in general and in the industries governed by the Federal Communications Commission, see Amanda B. Delp & John W. Mayo, *The Evolution of 'Competition': Lessons for 21<sup>st</sup> Century Telecommunications Policy*, 50 REV. OF INDUST. ORG. 393-416 (2017).

11. See *Hearing on "Investing in America's Broadband Infrastructure: Exploring Ways to Reduce Barriers to Deployment" Before the S. Comm. on Commerce, Science & Transportation*, 115th Cong. (2017) (Testimony of Larry Downes), <https://www.commerce.senate.gov/public/index.cfm/2017/5/investing-in-america-s-broadband-infrastructure-exploring-ways-to-reduce-barriers-to-deployment>.

12. For a background discussion of Schumpeterian competition, see HERBERT HOVENKAMP, SCHUMPETERIAN COMPETITION AND ANTITRUST 273 (2008), [https://www.competitionpolicyinternational.com/assets/0d358061e11f2708ad9d62634c6c40ad/Hovenkamp\\_webwcover.pdf](https://www.competitionpolicyinternational.com/assets/0d358061e11f2708ad9d62634c6c40ad/Hovenkamp_webwcover.pdf).

13. See *generally Guide to Antitrust Laws*, FTC <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws> (last visited Apr. 18, 2018).

14. See *Communications Act of 1934*, FCC, <https://transition.fcc.gov/Reports/1934new.pdf> (last visited Apr. 18, 2018).

15. See *Tech Transitions: Network Upgrades That May Affect Your Service*, FCC <https://www.dailydot.com/layer8/what-is-title-ii-net-neutrality-fcc/> (last visited Apr. 18, 2018).

16. See *generally Fact Sheet*, PEW RES. CTR., <http://www.pewinternet.org/fact-sheet/mobile/> (last visited Apr. 18, 2018) (notes in 2018 "95% of Americans now own a cellphone of some kind, and 77% of Americans own a smartphone [...] up from just 35% in [...] 2011").

required to provide next-generation 5G wireless services.<sup>17</sup> Such regulations are ripe for reform.

Third, given the overwhelming need for capital investments to expand and enhance the broadband platform in the United States, regulations that retard investment also become candidates for reform. In some cases, the investment-retarding effects of regulation may be offset by countervailing and significant consumer protections afforded by the existing regulation. In other cases, however, regulatory reforms may be identified that can ensure consumer protections while removing the investment-detering effects of the regulation. It is important to note that these considerations provide a compelling practical basis to review extant regulations with an eye toward preserving consumer protections, while simultaneously promoting private sector investment in this crucial sector of the economy. Importantly, by circumventing ideologically-driven policy actions, this more practical approach creates the real possibility of policy progress and agreement among political parties who may find themselves ideologically in stark disagreement.

Evidence of such bipartisan potential abounds at the city, state, and federal levels of government, as well as among federal regulators. A number of cities have embraced the need to adopt rules and regulations that accelerate and complement the private sector's push to accelerate broadband deployment. For example, the city of Chicago has adopted a "Tech Plan" that encourages the development of "world-class broadband infrastructure and increased digital access across the city" and has adopted initiatives to "foster a regulatory and policy-based environment in which businesses can flourish and grow by reviewing current business-related requirements and processes, such as permits and procurement, updating where appropriate."<sup>18</sup>

At the state level, numerous states in bipartisan efforts have facilitated the adoption of legislation designed to remove archaic regulatory barriers to streamlining the deployment of fixed and mobile broadband. For example, in August 2017, Delaware adopted the Advanced Wireless Infrastructure Investment Act to accelerate investment in mobile broadband infrastructure.<sup>19</sup> The bill had 11 Democrat sponsors and 10 Republican sponsors, passed both the Delaware legislative chambers with overwhelming

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17. See generally Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, 82 Fed. Reg. 21761, <https://www.federalregister.gov/documents/2017/05/10/2017-09431/accelerating-wireless-broadband-deployment-by-removing-barriers-to-infrastructure-investment>.

18. See THE CITY OF CHICAGO TECHNOLOGY PLAN 5, 16 (2013), <http://techplan.cityofchicago.org/wp-content/uploads/2013/09/cityofchicago-techplan.pdf>. While cities like Chicago have been proactive in reforming local regulations that are acting to impede the deployment of next-generation broadband facilities, other localities have to this point failed to act. Section III below addresses some of practical steps that can be taken to remove these impediments.

19. H.R. 189, 149<sup>th</sup> Gen. Ass., (De. 2017) codified as DEL. CODE ANN tit. 17, §§1601-1614 (2017).

bipartisan majorities, and was signed into law by its Democrat governor, John Carney.<sup>20</sup> As detailed in the next section, bipartisan bills in both the United States House of Representatives and the Senate are making their way through the legislative process. These bills do not promote removal of existing regulations on ideological grounds, but instead are designed to remove practical impediments that currently act to retard the deployment of highly sought after broadband services.

Similarly, agreement exists among federal regulators that streamlining deployment and removing bottlenecks is central to efforts to promote affordability for consumers. For example, Democrat Federal Communications Commissioner Mignon Clyburn has observed that a “[I]lack of affordability remains one of the largest barriers to connected communities. . . . Streamlining deployment is central to this effort. We must ensure that all providers are able to deploy and upgrade their infrastructure at the lowest costs and quickest pace.”<sup>21</sup> Similarly, Chairman Ajit Pai, the Republican head of the Federal Communications Commission (“FCC”) has noted that:

[W]e have to focus on bringing high-speed broadband to economically deprived areas. And to do that, we must recognize that deploying broadband isn’t easy. The Internet isn’t an abstraction. It’s a physical network of networks that requires massive investment to deploy and constant adjustment to manage. Internet service providers (ISPs) must trench conduit, lay cable, install electronics, attach antennas, and stitch together a seamless communications network from aging copper and brand-new fiber, legacy switches and modern routers.<sup>22</sup>

Finally, beyond these compelling economic motivations for regulatory reform to stimulate the expansion of broadband infrastructure in the United States, the federal legislature similarly compels this review and reform, specifically when states’ actions threaten the mission of the Commission. For example, the Telecommunications Act provides that “no state or local regulation . . . may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”<sup>23</sup> The statute goes on to state that if the FCC determines that “a State or local

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20. See generally Delaware House Bill 189, <https://legiscan.com/DE/bill/HB189/2017> [<https://perma.cc/N8GQ-T35S>].

21. See Remarks of FCC Commissioner at the #Solutions2020 Policy Forum, Georgetown University Law Center, at 4 (Oct. 19, 2016), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-341824A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-341824A1.pdf).

22. See Remarks of FCC Commissioner Ajit Pai at the Brandery “A Digital Empowerment Agenda” Cincinnati, Ohio (Sept. 13, 2016), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-341210A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-341210A1.pdf).

23. See 47 U.S.C. § 253 (a).

government has permitted or imposed any statute, regulation, or legal requirement that [acts to prohibit or has the effect of prohibiting the ability of firms to provide interstate or intrastate services], the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.”<sup>24</sup>

Together both practical economic necessity and statutory authority compel federal regulators to assess federal, state, and local regulations. These regulations may act to retard the ability of broadband service providers to expand services and capabilities. When such regulations can be identified they become practical opportunities for otherwise politically disparate parties to work collectively to advance economic welfare.

### III. LOW HANGING FRUIT

The practical case for review and reform of existing regulations to remove barriers to efficient infrastructure investment is not new. Indeed, as early as the scrutiny offered in the National Broadband Plan of 2010, it was observed that gaining regulatory approval to access rights-of-way “is often a difficult and time-consuming process that discourages private investment.”<sup>25</sup> To mitigate this barrier, the FCC suggested that “government should take steps to improve utilization of existing infrastructure to ensure that network providers have easier access to poles, conduits, ducts and rights-of-way” as “[t]he cost of deploying a broadband network depends significantly on the costs that service providers incur to access [them] on public and private lands.”<sup>26</sup>

Yet while the need for this review and reform is not new, the overwhelming growth in demand for broadband services creates situations in which local and state regulations retard the ability of broadband firms to efficiently respond to that demand through broadband investment and infrastructure growth. This creates the opportunity for practical policy solutions to reduce or remove economic impediments to expansion.

Consider, for example, the Broadband Conduit Deployment Act of 2018.<sup>27</sup> This bill advances the cause of accelerating broadband deployment and adoption by requiring states to evaluate the need for broadband conduits as they expand their highway systems.<sup>28</sup> In particular, the bill requires state governments, in concert with broadband firms, to evaluate any anticipated need within 15 years for broadband conduit deployment beneath the state’s

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24. See 47 U.S.C. § 253 (d).

25. See FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 109 (2010), <https://www.fcc.gov/general/national-broadband-plan> [<https://perma.cc/D35C-QJUZ>].

26. *Id.* at 109.

27. Broadband Conduit Deployment Act of 2018, H.R. 4800, 115<sup>th</sup> Cong. (2<sup>nd</sup> Sess. 2018).

28. *Id.* at § 331(a)(1).



new and expansion highway projects.<sup>29</sup> If the evaluation reveals an anticipated need for additional broadband deployment, the bill requires that the conduit necessary to support that broadband deployment be installed at the time of construction.<sup>30</sup> By establishing this “dig-once” policy, the cost of broadband deployment will fall precipitously. While the precise cost savings associated with dig-once deployment depends on a variety of factors, including population density and the topography of the relevant terrain, it has been estimated that the cost savings from a coordination of conduit and fiber installation with highway projects ranges from 25-33%, with higher cost savings in more densely parts of urban areas.<sup>31</sup> Cost savings in rural areas, while lower, have been estimated to be in excess of 15%.<sup>32</sup>

Additionally, this dig-once legislation not only seeks to promote the speedy deployment of broadband infrastructure, but also has the by-product benefit of minimizing traffic disruptions that would necessarily occur in the event of multiple trenching efforts. The practical, cost-saving reform also blunts ideologically-driven fears that policymakers seeking to facilitate deployment are turning a blind eye to the important goal of promoting competition by locking in monopolies.<sup>33</sup> Specifically, by explicitly compelling that conduit be provided “on a competitively neutral and non-discriminatory basis” the legislation would protect competition.<sup>34</sup> Finally, consistent with sound economic principles, the bill requires that access to conduit be at a charge not to exceed a cost-based rate.”<sup>35</sup> This legislation provides exactly the sort of practical reform that is necessary to accelerate the deployment of broadband. And importantly, this practical reform is supported by members of both political parties.<sup>36</sup>

Just as the Broadband Conduit Deployment Act of 2018 addresses the deployment of wireline broadband facilities, the “Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act” (“MOBILE NOW Act”) seeks to facilitate deployment of mobile broadband facilities.<sup>37</sup> This bipartisan bill<sup>38</sup> contains a variety of

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29. *Id.* at § 331(a)(1-3).

30. *Id.* at § 331(a)(3)-(b)(3).

31. See GAO - 12-687R, BROADBAND CONDUIT DEPLOYMENT 5 (2012).

32. *Id.*

33. For an example of such fears, see generally Susan Crawford, *Handcuffing Cities to Help Telecom Giants*, BACKCHANNEL (Mar. 29, 2017), <https://www.wired.com/2017/03/handcuffing-cities-to-help-telecom-giants>.

34. Broadband Conduit Deployment Act of 2018, H.R. 4800, 115<sup>th</sup> Cong. § 331(f) (2<sup>nd</sup> Sess. 2018).

35. *Id.*

36. See Jon Brodtkin, ‘Dig once’ bill could bring fiber internet to much of the US, ARS TECHNICA (Mar. 22, 2017), <https://arstechnica.com/information-technology/2017/03/nationwide-fiber-proposed-law-could-add-broadband-to-road-projects>.

37. See MOBILE Now Act, S. 19, 115<sup>th</sup> Cong. § 7 (2017) <https://www.congress.gov/115/bills/s19/BILLS-115s19es.pdf>.

common-sense practical measures designed to facilitate the deployment of infrastructure necessary to deploy mobile broadband services. For instance, the bill addresses buildings owned by the Federal Government in which parties seek to install, construct, modify, or maintain a communications facility installation.<sup>39</sup> In these situations, the bill requires that federal agencies develop a common application for entities applying for easements, rights-of-way, and leases and requires that applications be approved or denied within 270 days of filing.<sup>40</sup> The bill also requires the states to identify a broadband utility coordinator who would be tasked with “facilitating the broadband infrastructure right-of-way efforts within the State.”<sup>41</sup> Additionally, the bill addresses the glaring need for additional spectrum to be made available to support the rapidly growing demand for mobile voice, data, and video services by directing the National Telecommunications and Information Administration and the FCC to make at least 255 megahertz of new spectrum available for licensed and unlicensed use by 2020.<sup>42</sup> Quite apart from ideological differences among policymakers, the practical proposals in the bill are widely appealing, with the bill passing the Senate on a unanimous consent vote in August 2017.<sup>43</sup>

Two new legislatively-based regulatory reform measures have recently emerged, both of which are designed to remove existing regulatory impediments to rapid broadband deployment. In October 2017, Senators Wicker (R-MS) and Masto (D-NV) introduced the Streamlining Permitting to Enable Efficient Deployment of Broadband Act of 2017 Act (SPEED Act).<sup>44</sup> This Act seeks to fast-track the deployment of next-generation broadband technologies by exempting communications providers from duplicative environmental and historical reviews.<sup>45</sup> The bill also would exempt certain new small-cell facilities from environmental review.<sup>46</sup> A complementary bipartisan effort led by Senators Thune (R-SD) and Schatz

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38. The bill was introduced by Senator Thune (R-South Dakota) and Bill Nelson (D-Florida).

39. See MOBILE Now Act, S. 19, 115<sup>th</sup> Cong. § 7 (2017) <https://www.congress.gov/115/bills/s19/BILLS-115s19es.pdf>.

40. *Id.* at 6(b)(1-5).

41. *Id.* at 7(c)(1)(A).

42. See MAKING OPPORTUNITIES FOR BROADBAND INVESTMENT AND LIMITING EXCESSIVE AND NEEDLESS OBSTACLES TO WIRELESS ACT, REPORT OF THE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION ON S.19, S. REP. NO. 115-4, at 13 (2017).

43. See MOBILE Now Act, S. 19, 115<sup>th</sup> Cong. § 7 (2017) <https://www.congress.gov/115/bills/s19/BILLS-115s19es.pdf>.

44. See SPEED Act, S. 1988, 115<sup>th</sup> Cong. (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/1988>.

45. *Id.*

46. Such exempt facilities must lie within a public right-of way and not be higher (or substantially higher as determined by the FCC) than existing structures in the right-of-way. See S. 1988 § 4(1)(A) (2017).

(D-HI) similarly seeks to accelerate broadband deployment.<sup>47</sup> In particular, the discussion draft of this legislation would require state and local governments to act on wireless facilities applications within a certain timeframe (viz., a shot clock) and would limit the grounds for denying such requests.<sup>48</sup> Additionally, while acknowledging the rights of local authorities to charge for access to poles and local rights-of-way, the proposed legislation would require that such rates be “fair and reasonable,” “competitively neutral,” “technologically neutral,” “nondiscriminatory,” publicly disclosed, and “based on actual and direct costs”.<sup>49</sup>

Akin to the commonsensical measures identified in proposed legislation, other practical regulatory reforms have been identified by the FCC. In November 2017, the FCC adopted a pair of measures designed to facilitate and accelerate the deployment of next-generation broadband. Specifically, the Commission unanimously adopted a commonsensical Report and Order that will implement steps to streamline the ability of firms to replace certain utility poles with more modern ones that are capable of hosting next-generation, small-cell technologies.<sup>50</sup> At the same time, the Commission also adopted rules that bar utility pole owners from charging companies for certain costs that they have already recouped from others, adopted a policy of allowing local providers equal access to each other’s poles, and imposed a 180-day “shot clock” for approval of pole attachments.<sup>51</sup>

Collectively, these proposals before Congress and the FCC provide policymakers the authority to adopt numerous subtle regulatory reforms, which have the potential to substantially remove important barriers to expansion that are currently impeding the deployment of highly demanded broadband infrastructure. These reforms range from measures to expand spectrum availability,<sup>52</sup> to the adoption of dig-once policies,<sup>53</sup> to the adoption of shot clocks for expediting small cell sitings and removal of redundant regulatory siting reviews.<sup>54</sup> These commonsense, practical

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47. Staff Discussion Draft OLL17609, 115th Cong. (as circulated by the offices of Senators Thune and Schatz, October 2017).

48. *Id.* § 1(a)(4)(V).

49. *Id.* § 1(a)(6)(I).

50. *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, REPORT AND ORDER, 32 FCC Rcd. 9760 (2017), <https://www.fcc.gov/document/fcc-streamlines-requirements-utility-pole-replacements-0>.

51. *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, REPORT AND ORDER, DECLARATORY RULING, AND FURTHER NOTICE OF PROPOSED RULEMAKING, 32 RCC Rcd. 11128 (2017).

52. See MOBILE Now Act, S. 19, 115<sup>th</sup> Cong. § 7 (2017) <https://www.congress.gov/115/bills/s19/BILLS-115s19es.pdf>.

53. See Broadband Conduit Deployment Act of 2018, H.R. 4800, 115<sup>th</sup> Cong. (2<sup>nd</sup> Sess. 2018).

54. See FCC, *supra* notes 50 and 51.

reforms offer the low-hanging fruit to be picked to advance the America's 21<sup>st</sup> century infrastructure.

#### IV. CONCLUSION

There are, to be sure, some areas of strident disagreement about regulatory policies that should govern the broadband sector.<sup>55</sup> To date, these disagreements have consumed a massive amount of energy with little progress to show for it. At the same time, there are simple, less visible reforms to regulations which govern this sector that create the prospect for both accelerated investment in and adoption of new broadband technologies. These reforms create the real prospect of improving consumers' lives and enhancing the nation's competitiveness without sacrificing necessary consumer protections. In the matter of regulatory reform, the practicality of these benefits should provide a platform that trumps our broader ideological differences.

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55. *See generally* the massive debate over the rules and regulations that should apply to maintain a free and open internet. For a recent discussion, see Federal Communications Commission, REPORT & ORDER ON REMAND, DECLARATORY RULING & ORDER, GN Docket No. 14-28 (Mar. 12, 2015), [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-24A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf).