

Bridging the Final Gaps

Policy Paths for Broadband Deployment in Florida

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The broadband industry has invested billions of dollars in covering the country with ever faster, ever more ubiquitous broadband. From one generation of broadband to the next, the country continues to benefit from private industry best serving its customers with new services. Those customers have enjoyed new experiences with health care, education, entertainment, employment and more.

Florida has been amongst the leaders in enabling broadband expansion. The numbers across the country continue to improve as well. But today, perhaps more than ever, more can be done to reach those remaining without access.

National broadband today

In January 2021, the FCC released its annual report on broadband deployment, finding once again that broadband is being deployed to Americans in a reasonable and timely fashion. FCC Chairman Ajit Pai commented, “In just three years, the number of American consumers living in areas without access to fixed broadband at 25/3 Mbps has been nearly cut in half.” That is to say that nearly the entire country has access to speeds of at least 25 megabits per second (Mbps) download and 3 Mbps upload. This is the current and reasonable definition of broadband.

But it is also true that at the end of 2019 more than 14 million, around four percent of the population, U.S. residents across the country lacked access to these speeds, not exclusively but especially in rural areas.

That annual report followed a challenging year for the country in part because of the COVID-19 pandemic, but in trying times the true mettle of people or an industry can be gleaned.

At the beginning of the U.S. coronavirus outbreak, Federal Communications Commission (FCC) Chairman Pai asked broadband and telephone providers to take the Keep Americans Connected Pledge. Ultimately almost 800 broadband and telephone providers helped millions of Americans stay connected when it was needed most. They pledged not to terminate service to any residential or small business customers because of their inability to pay their bills due to the disruptions caused by the coronavirus pandemic, waived late fees for any residential or small business customers caused by their economic circumstances related to the coronavirus pandemic, and opened Wi-Fi hotspots to any American who needed them.

Chairman Pai also encouraged all providers to expand and improve low-income broadband programs they already had or to adopt low-income programs if they did not have them. In addition, he asked them to relax data cap policies, waive long-distance and overage fees, work with schools and libraries on remote learning opportunities and prioritize the connectivity needs of hospitals and healthcare providers.

Many jumped in, following the extra suggestions and taking them further. For example, Comcast promised to keep Wi-Fi hotspots open through the end of 2020. Verizon automatically enrolled Pledge customers into payment plans. Charter waived a portion of past due balances, and even raised the minimum wage for its workers to \$20 an hour, investing in a workforce that can help keep people connected.

This was made possible because of decades of broadband industry investment in people and infrastructure. Despite predictions that the system would buckle, that peaks in use would crash the system, broadband provision grew, and the industry took on more responsibility.

By the beginning of 2021 the understanding of the importance of broadband became apparent even to those who may not have been paying attention previously. Education, healthcare, employment, entertainment and even grocery shopping all became dependent on adequate online access.

To that end, companies, such as Comcast, have continued to lead and to reach even more of those previously without access. The company has announced that they are enhancing and accelerating what has been a long commitment to digital opportunity. This includes increasing speeds to 25 megabits per second (Mbps) (download) and 3 Mbps (upload) for all new as well as existing Internet Essentials customers at no additional cost.

Broadband in Florida today

This year has already brought more positive news for the continuing expansion of broadband across the country and for Florida.

Early last year, the FCC adopted the Rural Digital Opportunity Fund Report and Order (RDOF). The order created a framework for a fund and for spectrum auctions. Spectrum is a finite array of frequencies which the government claimed control over to manage on behalf of the people in pursuance of the “public interest.” To that end, by statute, the FCC has allocated licenses for spectrum through an auction process.

The first part of the auctions ended late last year awarding support, “to bring broadband to over five million homes and businesses in census blocks that were entirely unserved by voice and broadband with download speeds of at least 25 Mbps” according to the FCC. Future auctions will focus on census block locations that are only partially served. Florida has gained directly from this Fund.

For example, Charter Spectrum, one of the major broadband providers in Florida, announced that it will invest \$5 billion in buildout its system across its footprint. More than \$1 billion will be offset by support won in the auction. Most of this investment will occur in rural communities and be additional to current network expansion plans. Rural areas of central Florida in particular will benefit.

Expansions in these rural areas will offer 1 gigabit per second (Gbps) high-speed broadband access to all newly served customer locations. Plans would start at speeds of 200 Mbps.

Companies directing increased investment to Florida is not an accident. Florida’s leaders have consistently worked to cultivate an environment that welcomes broadband infrastructure investment. As a result, access and adoption rates in Florida are higher than many states. The Census Bureau reports that very nearly 96 percent of Floridians have access to high-speed broadband. The news is even better though. Most Floridians enjoy not just access, but



competition from broadband service providers to win their business, often with two or three competitors in urban areas including wireless, cable and satellite.

Understanding the investment and infrastructure needs is just one part of the equation. The regulatory environment is a critical part of expanding the number of Floridians who have access to broadband. As important is vision and leadership. Generally, policy makers in Florida have demonstrated an understanding of how the internet ecosystem has changed over the past three decades. They have not ignored or shied away from the important debate regarding the broadband marketplace and ensuring consumers have access to both high-speed services and to the content and information they want.

That debate and the appropriate follow-on actions started back in 2005, at least, when Florida made a significant move to deregulate its high-speed services marketplace. More recently, in 2017, and updated in 2019, the Advanced Wireless Infrastructure Deployment Act became effective, establishing a process for wireless service and infrastructure providers to install small cell technologies in municipality or county public rights-of-way. Florida was getting prepared for the next generation of wireless.

5G is that next generation standard for mobile communications. This standard is not just a system but rather is a system of systems that will work with previous technologies, requiring new infrastructure, including the smallest antennas which are easily hung on a building, as well as new investments in fiber, cell

towers and base stations to accommodate all of the “backhaul.” Improvements in both wireless and necessarily wired connections complete the communications loop. This ubiquity of high speeds will enable more of everything valued in broadband, particularly in urban settings, and open the world to promised technological advancements such as self-driving vehicles and a robust “internet of things.”

Then in 2020, legislation was enacted in Florida that moved the Office of Broadband under the Department of Economic Opportunity. Today, the attention to broadband continues with the introduction of comprehensive legislation that would bring greater attention to access for those in rural areas via the Broadband Internet Infrastructure Act. This legislative push was given energy by the Department of Economic Opportunity plan for Florida broadband that was released last year. The success and focus should continue.

Public policy done right

PRINCIPLED PUBLIC POLICY

From the perspective of the policy maker the government role is relatively easy as compared to the market’s role. Government needs to make sure it is not inhibiting broadband expansion and end any interference with progress. This, in turn, will make areas



with less densely packed customers still attractive with a viable business case.

A few other principles should be followed going forward. This may not include every principle but does highlight those that seem most prominent for future action in Florida.

FREEDOM

Freedom is important. Florida is one of the most free-market states in the nation. That very freedom is a cornerstone for ever increasing innovation, which will continue to propel Florida forward bringing economic benefits, increased productivity, faster growth and increased prosperity for all citizens.

To maintain this approach, the default prism should be that government regulation must be limited to only those areas that absolutely require it (where all other forms of market-based regulation is unworkable). If regulation is needed, then only the lightest of touches should be applied with time given to evaluate the success or failure of the new regulation before any more action is considered.

Further, simply because something has been regulated previously does not mean that there is still a coherent case for it to continue to be regulated. For example, regulations that may have been put in place because of a perceived monopoly, government created or otherwise, may simply serve as a barrier to advances in technologies and technology fueled benefits for the

public. In other cases, regulations that were designed in an age of different technologies should not simply be applied to new technologies because they seem to resolve to the same end. In the end, entrepreneurs must be free to respond to consumers wants and needs as part of an ongoing market process. And consumers free to make their choice, not a choice limited by government.

TECHNOLOGICAL NEUTRALITY

There is little doubt that multiple technologies, such as cable, fiber, wireless or satellite, will be available to deliver adequate broadband across the state for the remaining few percent without access. No one technology will fit every situation. Particularly in agricultural areas the answer is likely not a wired solution but might include a variety of technologies, not least which would be fixed wireless, that is a point-to-point signal transmission through the air instead of through cable or fiber.

The goal of policy should be neutrality, so that innovations and industry succeed or fail because of their success or failure in the marketplace, not because of government trying to raise revenue or because one company or industry has a stronger lobbying voice in Tallahassee.

This becomes particularly important in tax policy. Various forms of delivery of delivery should not labor under different tax structures, making it more difficult for one means to prosper. In

fact, given the reliance on communications to improve so many facets of life, high taxes and regulation seem, at best, out of place.

SUBSTITUTE PRODUCTS AND SERVICES ARE COMPETITION

So called antitrust policies have warped common sense and thoughtful logic in several ways. One such is the notion that substitute technologies are not competition when in fact they are direct competition. In this case, technologies that deliver broadband services do compete against each other. This competition provides a great variety of options for consumers so that the consumer can find what best suits their needs. Policies that result in these technologies being treated disparately are troubling.

LEGISLATE, DON'T REGULATE

Citizens have a means of redress and ways to access legislators. Regulators are often remote, hard to access and harder still for the public to influence. The collective will of citizens is best expressed through their elected legislators. In addition, compared to regulation, legislation creates a more stable environment for businesses to plan and deliver products and services. Legislators should always seek to minimize the purview of regulators in their legislative proposals.

CONSUMERS SHOULD BE PUT IN CHARGE

In any legislation or regulation consumer choice must be respected no matter how strongly some feel they can second guess what consumers “really” want. Businesses naturally work to serve as many customers as completely as possible. There is no profit to be made in displeasing current or potential customers.

While some start with the proposition that business looks to harm consumers the logic falters, especially in an age with increasingly rapid communications to an ever-growing audience. A company's reputation can be brought low in hours or even minutes. Starting with such illogic only leads to illogical, fact-lacking policy decisions, ultimately harming the consumer.

What should Florida do now?

With those principles as a guide how does Florida continue to build on its past and current success of quality public policy for broadband.

POLES

The continuing rapid deployment of broadband, a massive investment in our future, is something of a miracle given the many challenges that had to be overcome. Even today, with the value of

mobile and fixed broadband being universally known, old barriers remain and new barriers are being put in place.

Government has a vital role to play in the continued success of broadband particularly in addressing the real need for a systematic analysis and removal of barriers to infrastructure deployment. At a time of a continuing stumbling economy removing such barriers is critical, because as barriers to infrastructure are removed investment in the network increases. Those investments produce jobs and often those jobs become careers.

For example, fees and lease payments for right of way rental should be eliminated or at least minimized for access for broadband facilities. Similarly, rents set for attachment of broadband equipment and lines to existing poles must avoid arbitrary rate increases that slow deployment and increase costs to consumers. Pole owners should not be able to arbitrarily raise costs on broadband providers.

This challenge becomes particularly acute in areas with fewer homes where broadband providers need to access a greater number of poles for every home served. Costs, delays, permitting or other regulatory hurdles become increasingly large barriers for broadband deployment. Additionally, the rates to attach in Florida are some of the highest in the country. Timely, fair and cost-effective should be the goals of all those who want broadband access in rural and agricultural areas.

While it seems easy enough to attach broadband cables to utility poles, the process still involves permitting, renting space for equipment, and often replacing poles. Each pole requires an attachment, and the pole owners charge a price for each attachment – but that tends to be just the beginning of the money being sought.

In addition to the attachment cost, those who attach to poles are often forced to bear the entire financial burden of replacing any poles that were previously damaged, worn out or otherwise unusable. Normally, of course, the owner would bear the expense. In the case of broadband providers, they either pay, go to court, or are stopped from providing service to those who want it. With yet more expense, the provider is effectively limited at the margins in how many new customers they can serve.

At the least, replacement or upgrade costs should be fairly distributed between pole owners and those who seek to attach new equipment.

Further complicating the situation, utility pole laws and regulations are often contradictory between local, state and federal governments. Confusion means more delay and more cost.

Quick decisions in pole disputes and fair treatment of all parties in something as arcane as attaching equipment to old wooden poles can very directly bring broadband to more people. The big picture is clear, we should close the distance on the last mile of broadband delivery. Pole owners who hold up progress by holding



up broadband providers are missing the forest for the poles.

Rate reform focused on electrical and municipal co-ops is needed. Maine, and several other states such as Texas, North Carolina and Georgia have already taken, or are undertaking action, to create more opportunity for rural broadband build-out by addressing the pole attachment and replacement issues. If Florida is serious about successful rural deployment and if there is indeed an urgency for telemedicine, online education and emergency use during health crises, then poles should not be holding up progress.

Broadband companies want to provide service deep into the underserved areas, and have even made commitments to that end in accepting the RDOF money. Nevertheless high fees they must pay and the costs being then shifted to them to replace poles drives up the costs. This means less deployment. Floridians lose as the utilities and municipal co-ops grab the money that would have gone to greater deployment.

TAXES

Currently Florida levies a sales tax on the equipment used to deploy broadband. This directly and negatively impacts a company's ability to invest more in expanding service as the tax raises the cost of delivery.

A sales tax exemption on telecommunications and broadband equipment would help lower costs and thereby provide incentive for greater build out. Such equipment is an intermediate good, as

companies use it to deliver their services. As such, the tax runs afoul of appropriate tax policy by not being transparent, efficient, or simple. As these taxes are borne by the consumer without truly being made apparent, they merely serve to increase cost and the consumer is left in the dark. Shifting the tax burden of taxation away from production and business inputs allows for the market to grow with consumers enjoying lower prices or greater availability of services and products.

If the legislature wants to do something with tax policy, then it should consider enterprise zones. Enterprise zones are a market-oriented way for the government to encourage broadband rollout to unserved areas. As Florida has decided that encouraging broadband deployment is a policy priority, then a method for encouragement of build out via the tax code that preserves market forces could be accomplished. Florida could designate areas that are truly unserved and form a zone, within that zone tax credits would be offered to service providers that build out networks. In addition, regulation would be kept to an absolute minimum to not slow deployment of a larger network.

NO GOVERNMENT OWNED NETWORKS

Beginning in 2005 Florida has correctly managed municipal broadband or government owned networks, requiring transparency, accountability, and protection of taxpayers across the state. Florida already learned the lesson of failing government networks.

In 2004, Orlando began a pilot program to offer free internet access. The service was a failure as such networks prove to be in most cases. Use was a tenth of promised, costs were vastly higher per user than ever anticipated and private internet service providers entered the market offering better products for less cost as they built out their systems. Every bit of troubles, and the entrance of market players, were foreseen but the municipality charged forward uncaring and not listening.

Municipalities around the country have tried, and ultimately failed, to either set up their own communications networks or to partner with private companies to get into the business of broadband. The list of failures is long and keeps growing. In each case taxpayer money was put at risk, often without approval of taxpayers, and most often squandered.

Technology infrastructure investment, like most infrastructure investment, is not for the faint of heart or the partially committed. Municipalities and states across the country are constantly challenged by maintaining the relatively static infrastructure that they have already taken on, such as streets, sidewalks, bridges, and buildings.

Technology is vastly more challenging. As online services grow more sophisticated, customers have become accustomed to regular upgrades, challenging the ability of governments to keep up with demand. Video services alone are in a constant state of upgrade, either in providing more channels, more programming, or providing services to customers to allow them to customize their own video experience, such as video on demand.

Technological innovation continues to far outpace the speed of government, which simply cannot compete with the market. Even in cases where there is no private sector competition, government operated networks will never keep pace with public expectations. Broadband systems are not like a water public utility where the same pipes are used for one hundred years to deliver the same product in the same way. Broadband service providers are the path forward for maximizing the reach of and access to broadband.

Broadband grants and vouchers

Florida already has a broadband grant making program in place via the Office of Broadband. This Office “works with local and state government agencies, community organizations and private businesses to increase the availability and effectiveness of broadband internet throughout the state, specifically in small and rural communities. Through these partnerships, the Office encourages investment in grant funding opportunities for the broadband program that focus on the expansion of broadband.”

Even better, for those few where simply no market will exist, where there is no business case to be made regardless of incentives, technology neutral vouchers could be issued to homeowners to pay for installation and setup of broadband. We do not regulate grocery stores or give large infusions of taxpayer dollars to those stores, rather the individual is provided the means through direct subsidies. The debate about the need for any such mechanism best takes place in the legislature, not via a government agency. Clearly identified objectives, transparency and allowing competitive industries to determine the best technology and business case to meet those goals is the best choice.

Florida has established a firm foundation for its continued success in broadband access. Continuing the path of principled public policy, keeping consumer benefit and the goal of greater access firmly in mind should serve the state well. Of course, no system is perfect and can be improved. To that end Florida should focus on the impediments to the faster and farther-reaching broadband system. Simple changes to the tax code and how infrastructure are accessed will go a very long way to delivering broadband access to the four percent of largely rural citizens who currently go without.



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