

Testimony to be presented by Todd Eachus, President,  
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Senate Majority Policy Committee  
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## **BCAP Testimony on Regulatory Reform**

The Broadband Communications Association of Pennsylvania (BCAP) appreciates the opportunity to participate in the Senate Majority Policy Committee's hearing, "Regulatory Reform and Cutting the Red Tape in Pennsylvania," to address how overregulation, compliance cost and red tape are counterproductive to doing business in the Commonwealth.

For 75 years, Pennsylvania's cable and broadband providers have been serving the Commonwealth's needs with top-notch service and reliable networks. As you know, Pennsylvania has before it a once-in-a-generation opportunity with the infusion of \$1.16 billion in federal Broadband Equity, Access and Deployment (BEAD) funds. In August, Pennsylvania submitted its five-year action plan to the federal government to receive that investment. We're hopeful that grants targeting the more than 279,085 unserved locations within Pennsylvania will be awarded next year.

Those of us in the broadband industry are excited about the possibilities that exist to close the Commonwealth's digital divide. However, our members face a number of regulatory hurdles to reach that goal:

**Excessive Labor Rates:** The federal BEAD program's \$42.5 billion budget, from which Pennsylvania's derived its allocation of \$1.16 billion, was based on the projected costs to expand broadband to unserved and underserved locations per state. While all states with large rural areas will be challenged to close their own digital divides with BEAD dollars, Pennsylvania's task is nearly impossible.

Why? BCAP has been told by the PA Department of Labor and Industry (L&I) that BEAD is not a broadband program – “it’s a jobs program!” Prevailing wage labor rates for Teledata Linemen in Pennsylvania, who are tasked with deploying broadband in a pole’s communications space, fall under the category of “Electric Lineman,” with average wage rates, even in our most rural counties, of over \$90 per hour.

This is an appropriate wage for linemen who are trained and equipped to work in the dangerous high-voltage space. However, Teledata workers operate in a pole’s communications space and are not exposed to high-voltage lines or excessive heights. Although with the U.S. Department of Labor’s Bureau of Labor Statistics formally recognized Telecommunications Technician as a job category in September and numerous other states have their own distinct classification for these workers, L&I refuses to budge.

Broadband construction managers have told BCAP that without appropriate broadband worker classifications, the prevailing wage labor rates from L&I may raise project costs for broadband builds by over 50%. Since there is a 25% required local match, these increased costs will make it more difficult for small- and mid-sized broadband providers to participate. Even with the once-in-a-lifetime funding for broadband, the labor rates being cited by L&I will make it impossible to bring broadband to all the Commonwealth’s unserved residents.

**Municipal Permitting:** Broadband providers will use the Capital Projects Fund (CPF) and the BEAD program to close the Commonwealth’s digital divide. To be successful, this massive expansion of broadband will require close cooperation between providers and municipalities, which oversee local rights-of-way. This partnership is a particular challenge when the broadband expansion targets rural counties which might lack both full-time administrative staff and broadband connectivity at the borough/township level. With CPF- and BEAD-funded expansion projects, providers will often have broadband construction projects that encompass more than one municipality. To ensure both safety requirements are met and legitimate community needs are addressed while

expeditiously deploying broadband, BCAP has stressed the importance of establishing a “Broadband-Ready Community” designation to speed the application and permitting process. BCAP looks forward to working with members of this Committee, the Senate standing committees, and with the PA Broadband Development Authority on issues to streamline broadband deployment.

**Railroad Crossings:** Pennsylvania, with more than 5,000 railroad track miles, is a critical link in the nation’s freight transportation system. Railroads often delay for months before approving an application to pass fiber optic cable across railways.

BCAP members have applied for railroad crossing permits and paid for engineering services to complete the application process, only to discover the railroad had dedicated duct banks nearby which would have streamlined the process. Frequently, railroads won’t dispatch flaggers at crossings – called a “stalling tactic” by officials in other states. BCAP members have even resorted to providing fixed wireless across railroad rights-of-way to serve residents instead of extending fiber, because of the hassles and delays expected from the railroads.

Expanding broadband to nearly 300,000 unserved locations, the majority in rural Pennsylvania, won’t happen without the cooperation of the railroads. We look forward to working with the General Assembly and Pennsylvania’s railroads to set reasonable timelines and reasonable costs to expand broadband while ensuring the safe conduct of rail operations.

**Utility Barriers:** BCAP members place their facilities on poles owned by investor-owned electric utilities, rural electric cooperatives, telephone companies and municipal electric companies, and pay for that right. Broadband providers are not seeking free access to poles. Instead, broadband providers are only asking to pay their fair share and nothing more.

Unfortunately, pole owners too often use a pole attachment request by a broadband provider as an excuse to delay a potential competitor's broadband buildout or to extract as much money as possible from the attaching provider.

A BCAP member has seen this in an adjoining state in a large public-private broadband deployment, where the project "was twice as expensive and took twice as long" because electric utilities were "slow-rolling" the pole application process and from state government entities layering on additional requirements on broadband providers during the build.

This situation is particularly problematic when broadband providers are building out with federal funds to reach our nation's most vulnerable and unserved communities. While regulations to provide predictable, timely and reasonable access to poles are now at the state level with the PUC, these regulations do not apply to poles owned by municipal systems and electric cooperatives. Pole owners routinely delay the processing of attachment requests and/or look to unfairly shift their own pole costs onto the attaching broadband entity — a result that slows down deployment and unfairly increases deployment costs.

**Net Neutrality:** Federal overregulation is also an issue. The FCC has proposed to reinstate Title II, 20<sup>th</sup> Century telephone regulation over the internet. When Title II was overturned in 2017, activists guaranteed the American public that the internet would quite literally break without it. They predicted that prices for broadband would spike, that you would be charged for each website you wanted to visit, and that the internet itself would slow down. Did any one of those predictions come to pass? No.

Since the FCC's 2017 decision to return the internet to the same successful and bipartisan regulatory framework under which it thrived for decades, broadband speeds in the U.S. have increased, prices are down, competition has intensified, and record-breaking new broadband builds have brought millions of Americans across the digital divide."

FCC Commissioner Brendan Carr may have said it best: “Utility-style regulation of the internet was never about improving your online experience — that was just the sheep’s clothing. It was always about government control. So, no matter what you hear tomorrow and beyond, the internet is not broken, and the FCC does not need Title II to fix it.” BCAP joins Commissioner Carr in urging the FCC to reverse course and focus on the important issues that Congress has authorized the FCC to advance.”

Thank you again for the opportunity to share BCAP’s concerns with you. I am happy to answer your questions.