BREAKING BARRIERS: STREAMLINING PERMITTING TO EXPEDITE BROADBAND DEPLOYMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES

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 $^{^1{\}rm The}$ proposed legislation has been retained in committee files and is available at https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=115750.

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 $^{^1{\}rm The}$ proposed legislation has been retained in committee files and is available at https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=115750.

VII

BREAKING BARRIERS: STREAMLINING PER-MITTING TO EXPEDITE BROADBAND DE-PLOYMENT

Wednesday, April 19, 2023

House of Representatives,
Subcommittee on Communications and Technology,
Committee on Energy and Commerce,
Washington, DC.

The subcommittee met, pursuant to call, at 10:31 a.m., in Room 2322, Rayburn House Office Building, Hon. Robert Latta (chairman

of the subcommittee) presiding.

Members present: Representatives Latta, Bilirakis, Walberg, Carter, Dunn, Curtis, Joyce, Weber, Allen, Balderson, Fulcher, Pfluger, Harshbarger, Cammack, Obernolte, Rodgers (ex officio), Matsui (subcommittee ranking member), Clarke, Veasey, Soto, Eshoo, Cárdenas, Craig, Fletcher, Kuster, Kelly, and Pallone (ex officio).

Also present: Representative Johnson.

Staff present: Slate Herman, Counsel, Communications and Technology; Noah Jackson, Clerk, Communications and Technology; Sean Kelly, Press Secretary; Peter Kielty, General Counsel; Emily King, Member Services Director; Giulia Leganski, Professional Staff Member, Communications and Technology; John Linn, Senior Counsel, Communications and Technology; Kate O'Connor, Chief Counsel, Communications and Technology; Evan Viau, Professional Staff Member, Communications and Technology; Hannah Anton, Minority Policy Analyst; Jennifer Epperson, Minority Chief Counsel, Communications and Technology; Waverly Gordon, Minority Deputy Staff Director and General Counsel; Tiffany Guarascio, Minority Staff Director; Dan Miller, Minority Professional Staff Member; Caroline Rinker, Minority Press Assistant; Michael Scurato, Minority FCC Detailee; Andrew Souvall, Minority Director of Communications, Outreach and Member Services; and Johanna Thomas, Minority Counsel.

Mr. LATTA. Well, good morning. The subcommittee will come to order, and the Chair recognizes himself for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. ROBERT E. LATTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Broadband connectivity is a critical part of everyday life. Ordinary activities like work, education, healthcare now require a high-speed internet connection. Yet millions of Americans, particularly

those in rural areas, still lack access to broadband and aren't able to enjoy the benefits of connectivity.

Over the past few years, Congress has made significant investments to bridge this digital divide, the most significant being the Infrastructure Investment and Jobs Act, providing over \$45 billion for broadband deployment. While funding is a key piece to the puzzle, it's not enough to make sure that people have access to broadband; we need to make sure new networks can be built in a timely and a cost-efficient manner.

I firmly believe that the infrastructure bill was a missed opportunity to enact meaningful permitting reform that would have broken down barriers to deployment and stretched Federal spending. Lengthy application reviews and excessive fees for deployment will only delay connectivity and increase costs, leaving behind those Americans—American families who lack reliable internet access.

Without changes to the permitting process and meaningful oversight, all of this money set aside for broadband could be wasted. We cannot let that occur. Permitting reform is not just necessary to bridge the digital divide; it is necessary to help us continue to lead the world in the next-generation wireless technology. We will not beat China to 5G leadership if efforts to deploy new wireless infrastructure are delayed.

I appreciate that the Federal Communications Commission has worked to streamline State and local permitting process in this space. We need to codify and build on these reforms. The legislation we're reviewing today includes over 30 proposals that will help us streamline permitting at all levels of government, facilitating actions at the state of the stat

celerated broadband deployment.

These ideas include implementing shot clocks on State and local government reviews of permitting applications, capping fees, removing burdensome environmental and historic preservation reviews, and making it easier to deploy on Federal lands. Enacting these policies would help providers receive an answer in a timely manner, reduce the burdens and costs of the deployment, ensure

that the—ensure that we connect people quickly.

I am proud to once again lead the Wireless Leadership Act, which would help expedite the deployment of wireless infrastructure. This legislation would set timelines that State and local governments must abide by in reviewing applications and create a deemed grant remedy for reviews that miss deadlines. It would also reduce the cost of the deployment by limiting the fees these government—those governments can charge for reviewing applications and using a right-of-way. The bill does all this while preserving State and local zoning authority.

I hope that we can make these bills bipartisan as we move through our regular order. This is not a partisan issue. Both Republicans and Democrats want to close this digital divide. And as I've said in the past, it's not a Republican, Democrat, or Inde-

pendent issue, it's all of our issue.

The bills we are considering today will ensure we do so quickly and cost effectively. I am pleased that the Biden administration recognizes the need for permitting reform and is encouraging States to streamline their permitting processes for broadband deployment. I hope we can work on this package together.

I look forward to hearing from our witnesses today, all of whom understand the challenges of deploying broadband. And again, I want to thank our witnesses for appearing before us.
[The prepared statement of Mr. Latta follows:]

Opening Statement of Chairman Robert E. Latta Subcommittee on Communications and Technology "Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment" April 19, 2023

(As Prepared for Delivery)

Good morning, and welcome to today's hearing.

Broadband connectivity is a critical part of everyday life. Ordinary activities like work, education, and healthcare now require a high-speed internet connection. Yet millions of Americans, particularly those in rural areas, still lack access to broadband and are unable to enjoy the benefits of connectivity.

Over the past few years, Congress has made significant investments to bridge this digital divide, the most significant being the Infrastructure Investment and Jobs Act, providing over \$45 billion for broadband deployment. While funding is a key piece to the puzzle, it's not enough to make sure

people have access to broadband. We need to make sure new networks can be built in a timely and costefficient manner.

I firmly believe that the infrastructure bill was a missed opportunity to enact meaningful permitting reform that would have broken down barriers to deployment and stretched federal funding. Lengthy application reviews and excessive fees for deployment will only delay connectivity and increase costs, leaving behind those American families who lack reliable internet access. Without changes to the permitting process and meaningful oversight, all of this money set aside for broadband could be wasted. We cannot let that happen.

Permitting reform is not just necessary to bridge the digital divide, it is necessary to help us continue to lead the world in next-generation wireless technology. We will not beat China to 5G leadership if efforts to deploy new wireless infrastructure are delayed. I appreciate that the Federal Communications Commission has worked to streamline state and local permitting processes in this space. We need to codify and build on these reforms.

The legislation we are reviewing today includes over 30 proposals that will help us streamline permitting at all levels of government, facilitating accelerated broadband deployment. These ideas include implementing shot clocks on state and local government reviews of permitting applications, capping fees, removing burdensome environmental and historic preservation reviews, and making it easier to deploy on federal lands. Enacting these policies would help providers receive an answer in a timely manner, reduce the burdens and costs of deployment, and ensure that we connect people quickly.

I am proud to once again lead the WIRELESS Leadership Act, which would help expedite the deployment of wireless infrastructure. This legislation would set timelines that state and local governments must abide by in reviewing applications and create a deemed grant remedy for reviews that miss deadlines. It would also reduce the cost of deployment by limiting the fees those governments can charge for reviewing applications and using a right-of-way. The bill does all this while preserving state and local zoning authority.

I hope that we can make these bills bipartisan as we move through our regular order. This is not a partisan issue: both Republicans and Democrats want to close the digital divide. The bills we are considering today will ensure we do so quickly and cost-effectively. I am pleased that the Biden Administration recognizes the need for permitting reform and is encouraging states to streamline their

permitting processes for broadband deployment. I hope we can work on this package together.

I look forward to hearing from our witnesses, all of whom understand the challenges of deploying broadband. Thank you for appearing before us today.

I now yield to the Ranking Member of the Subcommittee, the gentlelady from the Seventh District of California.

Mr. Latta. And at this time, I will recognize for 5 minutes the gentlelady from California, the ranking member of the subcommittee.

OPENING STATEMENT OF HON. DORIS O. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. Matsui. Thank you very much, Chairman Latta. The topic of today's hearing is an important one. If we're able to find bipartisan solutions that speed broadband deployment, we can accomplish a goal shared by all members of the subcommittee: getting connectivity to communities who need it. While I have some concerns about process and representation on the witness panel today, it is my hope that moving forward we can get back to a more balanced approach that encourages bipartisan collaboration on a consequential issue.

The small towns and hamlets in my district are desperate for modern internet connectivity. The mayors that reach out to me are ready to do whatever it takes to get their residents connected. This

is something I know is not unique to me.

Most of us on this subcommittee hear from our districts about the lack of broadband on a daily basis. These local governments understand the challenges they have—they face better than anyone else. They know where broadband is available, where it's not, and the barriers they face to connectivity.

I believe we must be supporting, not limiting, their efforts. These communities want broadband connectivity, and with the funding included in the bipartisan infrastructure bill, we have historic opportunity to provide it. The bipartisan IIJA provided \$65 billion to expand access to broadband through new deployment and adoption efforts.

This includes \$42 billion for the BEAD Program, which is to support deployment of new broadband infrastructure projects. BEAD will be successful because it addresses the fundamental impediment to broadband deployment: economics. In rural areas where populations are more spread out, private companies can't afford to deploy or operate a network. In those areas, the problem isn't permitting barriers, it's an unsustainable business case.

Thankfully, Congress correctly recognized this dynamic with the bipartisan BEAD Program. Continuing to support NTIA in the States as they implement BEAD is the single most powerful tool

that we have to connect our unserved constituents.

Let me repeat: It is the bipartisan BEAD Program, more than any bill on today's agenda, that will be responsible for closing the digital divide. In both Republican and Democratic districts, this funding will soon result in shovels in the ground and homes coming online.

If you haven't already, I'd encourage Members to reach out to their State broadband offices. Let them know about the needs of your district and get engaged.

Over this past recess, I held a roundtable with NTIA, the California Public Utilities Commission, and official—and local officials to discuss broadband implementation. We outlined the broadband

needs of the rural areas in my district and how all levels of government can work together to get them served.

I believe that this type of Federal, State, and local collaboration is a key to successful broadband deployment. Leveraging the expertise of all involved to connect communities is the right path forward. That's why I'm concerned that as drafted some of the proposals on the agenda today could undermine that collaboration. Rigid, top-down Federal preemption can never be as successful as meaningful incentives to support local collaboration and engagement.

Having said that, it's clear that there are ample opportunities to support a more predictable, sustaining permitting process, especially at the Federal level. Contradictory permitting requirements, unacceptable deadlines, and a confusing tangle of bureaucracy at the Federal level has inhibited broadband deployment for far too long. This is especially a problem for western States where Federal lands can prevent middle-mile connections that serve as a bridge between communities.

I'm hopeful we can find bipartisan agreement on issues like this which can meaningfully speed up broadband deployment. We've done it before. I think about the bipartisan work on commonsense dig-once policies led by Congresswoman Eshoo or some of the consensus permitting items advanced by the FCC.

So while I am disappointed by some aspects of this hearing, I'm committing to really continuing the discussion. There is more to be done: providing clarity and responsiveness at the Federal level, incentives for local engagement, and a more predictable process across the board.

I want to thank our witnesses for appearing before us today, and I look forward to our discussion.

[The prepared statement of Ms. Matsui follows:]

Committee on Energy and Commerce

Opening Statement as Prepared for Delivery of Subcommittee on Communications & Technology Ranking Member Doris Matsui

Markup of 28 Bills, Subcommittee on Communications and Technology

May 17, 2023

Thank you, Chairman Latta.

The bipartisan items on the agenda today will speed broadband deployment and help bring connectivity to communities without it.

From the small hamlets in my district to the rest of the rural areas represented by the Members of this Subcommittee, those bills represent an important step forward.

I'm an original cosponsor of the DIGITAL Applications Act on the agenda today. This bill would take long-overdue action to establish online portals to accept, process, and grant applications for broadband deployment.

As we heard at the hearing on this bill, the current process for submitting and tracking the progress of applications is severely disjointed.

As the Wireless Infrastructure Association noted at our hearing, "measures that would direct federal agencies to develop online application portals have the potential to significantly expedite the permitting process."

So I'm glad to see the DIGITAL Applications Act moving forward. It'll provide much needed clarity and accountability for broadband deployments on federal lands.

But that's not the only bipartisan bill that will speed up broadband deployment.

We have bills that will expedite evaluation, standardize fees, and speed up permitting.

Representatives Palmer and Ryan's Standard FEES Act would establish a common fee for applications processing.

Representatives Duncan and Craig's Expediting Federal Broadband Deployment Act would establish an interagency strike force to prioritize broadband deployment on federal lands.

As we prepare for the distribution of BEAD funds, these bills will remove barriers and speed up deployments.

But, unfortunately, that's only part of the story.

There are other bills on the agenda today that are partisan and counterproductive. They undermine local authority and limit, rather than support, local governments.

Draconian shot clocks coupled with deemed granted provisions set up under-resourced local governments to fail.

Instead of providing the resources our local partners need to meet demand, these bills limit their authority and restrict their processes.

So, while I'm glad we're making bipartisan progress, the Minority, and many of our local governments are concerned about the partisan bills moving forward today.

Despite that, I know there will be a continued need to focus on this issue.

So, I'm excited to have bipartisan bills to help close the digital divide and I'm committed to moving them to the floor quickly.

I also want to take a moment to acknowledge that this Subcommittee will also be considering another short-term extension of the FCC's auction authority.

As I said at our hearing the day after that authority lapsed, this was, and continues to be, a failure. Reinstating it is a national security and economic imperative.

With companies like T-Mobile ready to put 2.5 gigahertz licenses to use this rolling lapse is preventing companies from providing new broadband services to American consumers.

And, in the run up to the World Radio Conference it sends a dangerous message to the rest of the world about our ability to lead.

So this extension is a step in the right direction but without a willing partner in the Senate, it may not be enough.

Nevertheless, I'm glad our Subcommittee is moving forward. We need to keep trying.

With that, I look forward to discussion of these bills and I yield back the remainder of my time.

Ms. Matsul. And I yield back the balance of my time.

Mr. LATTA. Thank you. The gentlelady yields back, and at this time the Chair recognizes for 5 minutes the Chair of our full Committee of Energy and Commerce, the gentlelady from Washington.

OPENING STATEMENT OF HON. CATHY McMORRIS RODGERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mrs. Rodgers. Good morning, and thank you, Mr. Chairman.

In 2021, Congress wrote the largest check for broadband deployment in our Nation's history, more than \$42 billion for the Broadband Equity Access and Deployment, or BEAD, Program, 1 billion for the middle mile infrastructure deployment, an additional 2 billion for deployment on Tribal lands, and 2 billion for rural broadband deployment through the Department of Agriculture.

These funds are just a small fraction of the funding appropriated over the past several years that could have been used for deploying broadband. This is an historical opportunity in our Nation's history to connect all Americans, and we cannot allow permitting delays

and unnecessary costs to mess it up.

Unfortunately, the Infrastructure Investment and Jobs Act spent more money without the needed fixes to the burdensome permitting process. We need to lift regulatory burdens, cut the red tape, roll out the red carpet. Without removing barriers to deployment, a record amount of taxpayer money will be wasted. This means that rural Americans will continue to watch from a distance as technologies advance, kids will go without access on—to online educational resources, and businesses in Rural America will be left behind as the digital economy continues to boom in urban centers across the globe.

This issue should not be partisan. The Federal funding wave is coming. The BEAD Program will begin awarding money for deployment as early as the end of this year in addition to the deployment that is already happening from both private and public invest-

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m ments}.$

It was good news last year that the National Telecommunication and Information Administrative encouraged States to identify steps to reduce costs and barriers to deployment, promote the use of existing infrastructure, promote and adopt dig-once policies, streamline permitting processes, and cost-effective access to poles, conduits, easements, and rights-of-ways.

But encouraging and promoting these actions is not enough. It's time for Congress to act and pass substantive permitting reform like the legislative discussion drafts we're considering today. The bills being discussed today offer a wide variety of needed improvements to existing permitting requirements at the Federal, State, and local levels.

I'm proud to lead the Wildfire Wireless Resiliency Act as a part of our legislative agenda. In wake of a disaster, communities need to be reconnected as quickly as possible when their networks go down. Communications providers working to reconnect victims to the systems that provide access to public safety, healthcare, and resources should not be tied up in regulatory nightmares.

Under this new legislation, projects to rebuild damaged or destroyed communication facilities will be exempt from NEPA and historical preservation review, which would have already occurred from the original communications facility to be built. We don't need another round of environmental or historic review when there's already existing infrastructure. And this is one of many we will discuss today that enacts reasonable permitting reforms.

Members across this committee are putting forth excellent solutions that guarantee these important Federal funds are going to go towards deployment, as Congress intended and communities need.

I look forward to hearing from the witnesses. To our rural and urban constituents currently under- and unserved, broadband is on the way. I'm hopeful that we can get it to you faster in a less costly manner.

[The prepared statement of Mrs. Rodgers follows:]

Opening Statement of Chair Cathy McMorris Rodgers Subcommittee on Communications and Technology Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment April 19, 2023

(As Prepared for Delivery)

Good morning, and thank you, Mr. Chairman.

IIJA Funding

In 2021, Congress wrote the largest check for broadband deployment in our nation's history.

More than \$42 billion dollars for the Broadband, Equity, Access, and Deployment, or BEAD, Program...

- ... \$1 billion for middle mile infrastructure deployment...
- ...an additional \$2 billion for deployment on Tribal lands...
- ...and \$2 billion for rural broadband deployment through the Department of Agriculture.

These funds are just a small fraction of the funding appropriated over the past several years that could be used for deploying broadband.

This is a historical opportunity in our nation's history to connect all Americans – and we cannot allow permitting delays and unnecessary costs to mess it up.

Permitting Reform

Unfortunately, the Infrastructure Investment and Jobs Act spent more money without the needed fixes to the burdensome permitting process.

We need to lift these regulatory burdens, cut the red tape, and roll out the red carpet.

Without removing barriers to deployment, a record amount of taxpayer money will be wasted.

This means that rural Americans will continue to watch from a distance as technologies advance.

Kids will continue to go without access to online educational resources...

...and business in rural America will be left behind as the digital economy continues to boom in urban centers across the globe.

Call to Action

This issue should not be partisan.

The federal funding wave is coming. The BEAD program will begin awarding money for deployment as early as the end of this year...

...in addition to the deployment that is already happening from both private and public investments.

It was good news last year that the National Telecommunication and Information Administration encouraged states to identify steps to "reduce costs and barriers to deployment...

...promote the use of existing infrastructure...

...promote and adopt dig-once policies, streamlined permitting processes...

...and cost-effective access to poles, conduits, easements and rights of way."

But encouraging and promoting these actions is not enough.

It's time for Congress to act and pass substantive permitting reform, like the legislative discussion drafts we are considering today.

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Under this new legislation, projects to rebuild damaged or destroyed communications facilities would be exempt from NEPA and Historical Preservation review...

...which would have already occurred for the original communications facility to be built.

We don't need another round of environmental or historic review where there was already existing infrastructure.

And this bill is one of many we will discuss today that enacts reasonable permitting reforms.

Members across this committee are putting forth excellent solutions that guarantee these important federal funds are going towards the deployment that Congress intended ... and communities need.

Closing

I look forward to hearing from our witnesses.

To our rural and urban constituents currently under- and unserved...broadband is on its way.

I am hopeful that we can help it get to you faster and in a less-costly manner.

Thank you, and I yield back.

Mrs. Rodgers. Thank you. I yield back.

Mr. LATTA. Thank you. The gentlelady yields back. The Chair now recognizes the gentleman from New Jersey, the ranking member of the full committee, for 5 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Chairman.

Breaching the digital divide has been a top priority of this committee for years, and in 2021 Democrats delivered on that promise with passage of the bipartisan infrastructure law. This law made historic investments in broadband that will help connect millions of Americans to high-speed, affordable, and reliable broadband regardless of income or ZIP Code. And I look forward to discussing today how we can build upon the investments we've already made to continue bridging the divide.

For years, House Democrats have championed the need to make government investments in areas where the private markets have failed to build out broadway—broadband networks equitably and affordably. Far too many people in these communities the lack for—for them, the lack of high-speed, reliable internet means not having the opportunity to do basic things that many of us now take for granted like applying for a job, telehealth appointments, or

completing schoolwork from home.

All told, the Biden administration will provide more than \$60 billion across a number of programs to bring state-of-the-art broadband networks to families and households in primarily unserved and rural communities, Tribal lands, and other unconnected areas around the country. The overwhelming majority of these funds have yet to be distributed, and therefore the hard work ensuring these funds and projects reach the people who need them mostly remains ahead of us.

It's critical that we ensure States and communities are prepared to receive these funds and get projects moving quickly and efficiently. If there are impediments or delays that might jeopardize the smooth implementation of these programs, then we want to know about them.

So it's important for this committee to hear from expert witnesses about potential issues, but that's not the point of today's hearing. Republicans have skipped right past an examination of the issues to potential solutions, which is unfortunate and defies logic. The subcommittee should first take the time to identify where the problems are before examining solutions. And this legislative hearing is, in my opinion, too broad.

The 30 Republican discussion drafts on the agenda span a vast number of issues, amend a number of different Federal laws, impact a number of different industry sectors and State and local autonomy. The Republican majority invited four witnesses to cover these bills, and yet the Chair rejected our request for a second Democratic witness for the panel, and I have deep concerns about that imbalance and the precedent it sets, especially because the Republican majority skipped holding an informational hearing.

I believe that any discussion of these issues that does not include State and municipalities, Tribal representatives, environmental justice communities, and other experts with relevant testimony is incomplete. The Republican majority's actions are inconsistent with their calls for bipartisan collaboration, and unfortunately may make it harder to work together on these bills as they move forward.

To be clear, if there are real obstacles in deploying broadband universally, we want to know about them and find ways to address them. But some of the Republican proposals before us today are supposed solutions to problems that simply do not exist. In fact, one of the clearest obstacles to reliable and affordable internet are State laws in more than a dozen States that prohibit municipalities from competing in the free market to build or operate their own broadband network if they choose.

Representative Eshoo's Community Broadband Act is critical to ensuring flexibility and competition for communities that want to provide this service for their residents, which is a successful model in many States. Representative Fletcher's Broadband Incentives for Communities Act would kick start deployment efforts by providing resources to communities to deal with the influx of applications for these projects and others. So these two bills are real solutions as we bridge the digital divide.

And, obviously, I think that we need to investigate a lot of the background here before we move forward with these bills, Mr. Chairman.

[The prepared statement of Mr. Pallone follows:]

Committee on Energy and Commerce Opening Statement as Prepared for Delivery

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Full Committee Ranking Member Frank Pallone

Markup of 28 Bills, Subcommittee on Communications and Technology

May 17, 2023

This markup today is an overwhelming missed opportunity by the Republican majority. While I am happy to support a small handful of bipartisan bills that improve certain processes at federal agencies that deal with broadband permitting, I am disappointed to say that the major permitting bill would run roughshod over critical environmental and cultural protections. It is partisan legislation that will ultimately do nothing to ensure that the historic broadband investments Democrats delivered as part of the Bipartisan Infrastructure Law reach all communities that need it.

As this Subcommittee heard at the legislative hearing just a few weeks ago, the biggest obstacle to permitting is a lack of resources at permitting agencies at the federal, state, and local level, which are responsible for processing siting applications. The witness panel delivered that message loud and clear, even as the Majority denied us a second Democratic witness and stacked the panel, in a departure from Committee precedent.

Democrats addressed the resources issue for federal agencies last year with passage of the Inflation Reduction Act. That law, which was opposed by every Republican on this Committee, appropriated money to the relevant agencies to speed up environmental reviews. It is already proving to be effective in accelerating those processes for large environmental projects.

Unfortunately, one bill that would address this issue for local governments— Representative Fletcher's Broadband Incentives for Communities Act—is not on this markup today because we were unable to reach agreement on a solution that provides the resources that local governments need, and will continue to lack, for this very purpose.

Instead of solving that problem today, we will consider an AINS that throws together almost two dozen partisan bills that have no chance at becoming law. Many of these bills would exempt communications infrastructure from environmental and historic preservation requirements when, in reality, most of these projects do not require those approvals. And whether or not these requirements exist, there will still be a bottleneck at permit offices if there are not enough qualified employees at the agencies to review and approve the applications.

To make matters worse, another set of these partisan bills would severely weaken the authority of local governments to steer investment and deployments in their own communities. This kind of deregulation and preemption of local authority is one reason the digital divide has grown to be as pervasive as it is today.

May 17, 2023 Page 2

We simply cannot continue to make it easier for communications providers to cherry pick the areas they want to serve and, more importantly, to avoid investing in the areas they don't. These communities tend to be overwhelmingly low income, rural, and communities of color. When providers turn their backs on these communities, they are denying the people there the tremendous opportunities that modern communications infrastructure provides – educational opportunities, advanced medical services, job training, and much more.

It is disappointing my Republican colleagues have not learned these lessons and have instead chosen to forge a partisan path on legislation that would only exacerbate the problem. I would also point out that in their Default on America bill, the Majority would make severe cuts to federal agency budgets, and they would also claw back the money that state and local governments received during COVID. So, at the same time, they are demanding more of these permitting agencies, they are cutting their resources. It makes no sense.

Whenever my Republican colleagues are ready to work in a productive way on targeted solutions, Democratic members are ready and eager to have those discussions.

Finally, I would like to mention Chair Rodgers' spectrum bill that we will consider today. We must renew the Federal Communications Commission's auction authority for the long term. We must also restore the National Telecommunications and Information Administration's place as the clear manager of federal spectrum and ensure that the proceeds from future auctions be used to fund important projects that benefit the public. The bill before us today is a short-term bill, but Chair Rodgers and I will continue to work on these issues together and with our Senate colleagues. I look forward to soon passing a comprehensive package.

Mr. PALLONE. And with that, I yield back the balance of my time. Mr. LATTA. Thank you. The gentleman yields back the balance of his time.

And I would like to point out for our witnesses that you will each have 5 minutes to address the committee. And also, I don't see in front of you—do we have the light, the timer in the front for the witnesses? Yes, there—I see we don't have it on the tabletops today. But you'll see that when the light turns yellow that you'll each have 1 minute remaining, and then when it turns red, the

time has expired.

Our witnesses for today's meeting is Mr. Michael Romano, executive vice president of the NTCA—The Rural Broadband Association; Mr. Michael Saperstein, the senior vice president of Government Affairs and Chief Strategy Officer of the Wireless Infrastructure Association; Mr. Ernesto Falcon, the senior legislative counsel, Electronic Frontier Foundation; Mr. Louis Finkel, the senior vice president of government relations, National Rural Electric Cooperative Association; and our final witness is the Honorable Michael O'Rielly, president of MPORielly Consulting, Inc.

And with that, Mr. Romano, you are recognized for 5 minutes.

STATEMENT OF MICHAEL ROMANO, EXECUTIVE VICE PRESIDENT, NTCA-THE RURAL BROADBAND ASSOCIATION; MICHAEL SAPERSTEIN, SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS, AND CHIEF STRATEGY OFFICER, WIRELESS INFRASTRUCTURE ASSOCIATION; ERNESTO FALCON, SENIOR LEGISLATIVE COUNSEL, ELECTRONIC FRONTIER FOUNDATION; LOUIS FINKEL, SENIOR VICE PRESIDENT, GOVERNMENT RELATIONS, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION; AND MICHAEL O'RIELLY, PRESIDENT, MPORIELLY CONSULTING, LLC

STATEMENT OF MICHAEL ROMANO

Mr. ROMANO. Thank you. To Chairwoman McMorris Rodgers, Ranking Member Pallone, Chairman Latta, Ranking Members Matsui, members of the subcommittee: Thank you for the chance to testify this morning regarding how to accelerate the deployment of broadband networks.

My name is Mike Romano, I am the executive vice president of NTCA—The Rural Broadband Association. We represent approximately 850 small community-based network operators who live in and serve the most rural parts of the United States.

NTCA members have made extensive strides in deploying broadband in rural America. This gives them substantial experience and perspective on permitting and approvals relating to Federal lands, highways of all kinds, and railroad crossings, among others. At the same time, they have more to do to upgrade their remaining customers and they are actively engaged in expanding to reach unserved locations in other areas. This gives them a substantial interest in finding ways to improve and expedite permitting procedures where possible.

My written statement provides a series of case studies involving NTCA members to highlight some of the most significant concerns they encounter in navigating current permitting laws and procedures. Examples include a provider who incurred \$30,000 in engineering and environmental fees and delay of nearly a year to cross BLM land for one small part of a large fiber ring.

A provider who was trying to upgrade a network to fiber in a previously disturbed right-of-way that took 9 months to approve despite a categorical exclusion under NEPA, with the approval coming too lets to start construction during the winter.

ing too late to start construction during the winter.

A provider who faced delays of nearly 2 years for historical and consultation processes under the National Historic Preservation Act for projects that were primarily in previously disturbed rights-of-way.

And a provider who faced delays and fees of \$12,000 simply to

bore 15 feet under a railroad crossing.

These examples and many more like them demonstrate how providers can face lengthy and frustrating delays, and the need to expend substantial sums beyond the actual cost of construction to access Federal lands or other rights-of-way for broadband deployment. What must not be missed, however, is that this is just the current state.

Certainly broadband deployment has accelerated over the past several years, but we are just on the precipice of even more massive investment as important well—much-needed initiatives like the Broadband Equity Access and Deployment Program, or BEAD, come online. These expanded efforts will lead to much greater demand for permits and approvals that threaten to exacerbate existing backlogs and could undermine a shared national objective of universal connectivity.

While permitting is just one piece of the puzzle when it comes to the business case for rural broadband, it is a critical piece, and NTCA therefore greatly appreciates both the subcommittee's general attention to these issues and its specifical consideration of various pieces of legislation aimed at promoting streamlining. Bills like the Broadband Leadership Act, the BEAD Fees Act, and the Reducing Barriers for Broadband on Federal Lands Act will help facilitate fiber deployment in rural areas through a variety of measure outlined in those bills.

I also highlight in my written statement how the subcommittee can make sure that other legislative measures under consideration here will streamline wireline and wireless deployments alike, and the need for further conversations regarding how to promote timely and cost-effective access to poles and railroad crossings.

Finally, workforce development has become an important phrase in our national dialogue these days generally and in the broadband industry specifically. But as my written statement highlights, this concept is going to be essential as well in considering how to make permitting more efficient. As good and as skilled as many employees in Federal, State, and local permitting offices may be, NTCA members consistently report that there appears to be a lack of staff resources necessary to handle the quantity of applications presented, leading to confusion, delay, and a lack of effective communication at times.

For example, one NTCA member reported that the BLM office in a large western State had only two staffers tasked with reviewing all broadband, oil, and gas permitting applications there. Therefore, even as the subcommittee rightly and thoughtfully considers process improvements that can accelerate broadband deployment through the legislation presented, NTCA encourages attention as well to ensuring that permitting agencies and offices at all levels are staffed for the work to come, that the staff will be well-trained for the important work they need to do, and that internal systems and procedures are in place within each agency to ensure more timely and effective communication with applicants.

Thank you for the opportunity to testify. I look forward to the conversation today and answering your questions.

[The prepared statement of Mr. Romano follows:]



Statement by

Michael Romano Executive Vice President NTCA–The Rural Broadband Association

Before the
United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications and Technology

"Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment"

Washington, DC

April 19, 2023

INTRODUCTION AND BACKGROUND

Chairman Latta, Ranking Member Matsui, and members of the Subcommittee, thank you for this opportunity to testify regarding how to help accelerate and make more efficient the deployment of communications networks for the benefit of millions of Americans still in need of better broadband connectivity.

I am Michael Romano, the Executive Vice President of NTCA-The Rural Broadband Association. I oversee NTCA's public policy, government affairs, and business development initiatives, the educational mission of the Foundation for Rural Service, and several areas of internal association operations. My prior work experience and educational background are detailed in the curriculum vitae provided to the Subcommittee. My remarks today are on behalf of the NTCA membership, which consists of over 850 small community-based providers of telecommunications and broadband services in some of the hardest-to-serve reaches of rural America across 45 states. Despite having approximately 5,000 customers on average, facing typical densities of fewer than six locations per mile, and operating with an average of fewer than 30 employees, these providers have deployed advanced networks in deeply rural spaces; NTCA's latest survey indicates that on average 80% of members' customers have fiber connections and 100 Mbps service levels or greater. This good work has not been easy, however. It has taken extraordinary effort by these providers to serve their neighbors, friends, and family and this work rests atop a unique mix of commitment to their communities, entrepreneurial spirit, and effective governmental policies and programs that help make and sustain the business case for investing and continuing to operate networks in deeply rural areas.

It is worth noting, however, that for all this compelling progress, there is more to be done. Even as 80% of NTCA members' rural customers on average can receive service that rivals what many urban and suburban users enjoy, this means that work remains to deliver such service to the remaining 20%. And, in rural areas not fortunate enough to be served historically by community-based providers like those in NTCA's membership, the picture is less promising still – in these other areas, far more rural Americans long for the kind of broadband access needed to participate meaningfully in an increasingly online world.

NTCA members' progress in upgrading networks in their own historical serving areas over the past several years is remarkable, and they have been proactive in seeking to expand into rural markets traditionally served by other providers as well. As just one example, NTCA members have received more than \$1 billion in ReConnect Round 3 loans and grants through the U.S. Department of Agriculture ("USDA"). Looking forward, I expect that many NTCA members will seek to participate in the Broadband Equity, Access, and Deployment ("BEAD") program. In short, NTCA members are leaving no stone unturned in seeking to improve connectivity across rural America.

But this brings us to this very important hearing. Based upon this extensive history of network deployment – through federal lands, along interstate, state, and local roadways, under railroad crossings, on poles, and/or in private rights-of-way – NTCA members can share many "lessons learned" regarding permitting processes that are inefficient, outdated, understaffed, or simply not working otherwise as intended. We are grateful for the chance to share these experiences and to highlight how the draft legislation under consideration can balance the goals of promoting

broadband deployment while protecting our environment and preserving areas of historical and cultural significance. Although the removal of permitting barriers will not by itself make the business case for broadband investment in deeply rural areas, thoughtful action in this regard is certainly important to improve that business case – and ultimately to help promote the availability of more robust and affordable broadband services for the benefit of rural consumers.

SUMMARY

In this testimony, NTCA provides examples from rural network deployments to highlight how permitting processes can affect the achievement of national broadband goals. NTCA members are particularly concerned that the delays and costs that already arise out of some federal, state, and local permitting requirements will only grow as efforts to deliver on universal broadband connectivity ramp up further in coming years. It is therefore essential to think proactively about how to streamline permitting while still balancing important environmental and preservation objectives. It will be important as well to consider what is necessary to provide permitting offices with the staffing, structure, and systems needed as a practical matter to communicate effectively with permit applicants and to process applications in a timely and organized manner.

This testimony further describes how certain of the measures under consideration – including the BROADBAND Leadership Act, the BEAD FEES Act, and the Reducing Barriers for Broadband on Federal Lands Act – would address concerns experienced by NTCA members. Furthermore, we highlight the importance of ensuring that the streamlining measures contemplated in other bills will apply to wireline and wireless network deployments alike and, in the case of interactions with federal agencies, to any deployments that trigger such reviews.

TIME-CONSUMING AND EXPENSIVE PROCESSES TO OBTAIN APPROVALS FOR THE INSTALLATION OF BROADBAND NETWORK INFRASTRUCTURE CAN PRESENT BARRIERS TO WIDESPREAD AVAILABILITY AND AFFORDABILITY OF BROADBAND IN RURAL AREAS.

NTCA members across the nation indicate that our country's broadband availability and affordability goals could be undermined by inefficient or ineffective local, state, and federal processes to obtain permits for network deployment. This appears to be a shared concern for providers of all kinds – large and small, rural and urban, wireline and wireless – and in this testimony we highlight several ways this could be addressed through draft legislation.

Obtaining access to federal lands for broadband facilities installation – or otherwise obtaining a permit when a project is considered a "major federal action" under the National Environmental Policy Act ("NEPA") and/or a "federal undertaking" pursuant to the National Historic Preservation Act ("NHPA") – is a common concern of rural providers. These operators often have no choice, for example, but to install fiber under a road touching Bureau of Land Management ("BLM") or Forest Service property, as re-rerouting even just that small portion of a project may be infeasible due to substantial distances, impassible terrain, or the inability to obtain easements on privately held land (if any is nearby). Members recount delays of up to two years in some cases to obtain permissions through the environmental, historic preservation, and consultation processes involved with NEPA and NHPA. Indeed, even if a project touches federal land for only a short distance as part of a larger deployment (or not at all in some cases), the entire project can still be delayed by the need to obtain approvals for the part under an agency's purview. As just a few examples to provide context for these concerns:

- One NTCA member sought to place fiber under a road under the purview of the BLM. The project was part of a fiber ring meant to improve redundancy and reliability of the operator's network, and the portion touching BLM land was a small percentage of the overall project. Among other costs dedicated to this small component, the provider incurred \$30,000 for an engineering and environmental study. Moreover, the initial permit application was not accepted as complete for nearly a year, during which time the provider received sequential requests for additional information.
- Another NTCA member utilized ReConnect funding to connect consumers via fiber in a
 rural area. Although the entire project was in a previously disturbed right-of-way and
 subject to a NEPA "Categorical Exclusion" (the most streamlined level of NEPA review),
 the provider was not granted final approval and release of funds to begin construction for
 9 months. This resulted in an even greater delay, however, as the project is in an area of
 the country where frozen ground prevents construction for approximately 5 months of the
 year meaning construction could not commence for another several months thereafter.
- Still another NTCA member reported that state permitting fees have been increasing, with
 the fees amounting to over \$125 per subscriber and with no clear tie to the costs incurred
 by the state in processing the application or arising out of the use of the right-of-way.
- One member was awarded a Reconnect Round 1 award in 2019. This company has
 worked with its archaeologist since that time to complete, to no avail, the NHPA
 consultation process. This project would bring fiber to the homes of several hundred
 rural consumers who today receive only DSL service.
- Another NTCA member sought to install fiber in a public right-of-way adjacent to a state highway that intersected with a railroad crossing at a single point. To place fiber beneath 15 feet of the railroad line along this state highway, the railroad quoted fees totaling \$19,000, including the permit fee, an application fee, an "engineer mobilization fee," and \$2,500 for a flagger/observer in addition to costs needed for additional insurance beyond that otherwise carried for the project. (To be clear, these were just the crossing fees, and did not include any of the actual costs of network construction.) Ultimately, the intervention of a local economic development office helped in reducing the fees to \$12,000 and, after all this process and cost, the fiber was deployed for the 15 feet under the railroad crossing along the state highway without ever touching the railroad assets.
- One member experienced significant delays receiving permits for two separate projects funded by the ReConnect program. In each case, the projects were primarily in previously disturbed terrain, but historical preservation and consultation processes under NHPA nevertheless took approximately two years to complete.
- Another NTCA member has been informed that final release of ReConnect grant funds
 would require securing more than two dozen wetlands permits, which cannot be obtained
 without first submitting more detailed engineering and network design plans despite
 such plans having been included in the ReConnect grant application in the first instance.

 A member reported attempting to deliver fiber connections to several schools on Tribal lands, but apparent staffing shortages in Tribal offices to complete NHPA consultation obligations have delayed this work.

As these examples highlight, NTCA members and providers like them can face lengthy delays—and the need to expend substantial sums beyond the actual costs of deployment—to access federal lands or other rights-of-way for broadband infrastructure installation. Especially in the case of installation of facilities in previously disturbed terrain, delays in processing of applications can be confounding and counterproductive to upgrading of existing networks.

Importantly, NTCA members have serious concerns that, without proactive planning and concrete action, issues of this kind could become more severe and the problems exacerbated in coming years. Particularly as private investment ramps to meet ever-increasing broadband demand, and as the largest broadband deployment funding program in our nation's history launches to amplify and augment these industry efforts, we are at a critical juncture.

NTCA members have seen firsthand that federal agencies and other permitting offices are overcome by the requests and applications before them now, leading to the kinds of delays described above. One NTCA member, for example, shared that BLM had only two staff people to process applications in a larger western state – and this was for access not only for communications uses, but for oil and gas extraction as well. As tens of billions of dollars flow into much-needed broadband deployment efforts in the next few years, the workflows to review permit applications likely will become more overwhelming and could lead to even greater delays and costs. We must ensure that these agencies and offices have the resources and skillsets needed to meet this demand.

In addition to (and perhaps related to) staffing levels at all levels of government, training and an emphasis upon more frequent communication and effective internal systems and processes are likewise important. NTCA members report that communication with permitting offices and agencies can fall silent for long stretches of time regarding the status of applications or what else might be needed to deem an application "complete," despite repeated inquiries by providers and their engineers and contractors. These can be followed at times by serial requests for additional information that could have been caught earlier or avoided altogether with better guidance and communication upfront. This dynamic in turn undermines the purpose of the "shot clock" established by federal law for review and approval of applications because the application is not deemed complete and thus subject to the 270-day review period until much longer after filing.

Against this backdrop of issues faced in obtaining permits and other approvals for broadband network deployment, I will turn now to how legislative measures being considered in this hearing could help. As noted earlier in this testimony, the business case for deployment and ongoing operation of broadband networks in deeply rural areas faces challenges that go beyond permitting alone. When returns are measured in decades across wide swaths of rural America where customer densities may only be a few locations per mile, there is a clear need for broadband deployment initiatives and sustainability programs like the federal Universal Service Fund to ensure that our nation's broadband goals will be realized now and for decades to come. But efforts to address barriers to broadband deployment are a critical piece of the puzzle as well, and this testimony turns now to the measures before this Subcommittee that could help in solving this puzzle.

LEGISLATIVE MEASURES SUCH AS THOSE BEING CONSIDERED BY THIS SUBCOMMITTEE CAN HELP PROMOTE THE DEPLOYMENT OF ADVANCED FIBER NETWORKS IN RURAL AMERICA ON A MORE TIMELY AND COSTEFFECTIVE BASIS.

On behalf of NTCA members, I thank this Subcommittee for its dedication and thoughtfulness in exploring the issues surrounding permits and approvals for broadband network deployment and for posting draft measures for consideration. This testimony focuses upon select pieces of the legislation presented for this hearing that are most likely to have the greatest impact upon the kinds of rural operators that NTCA represents. I discuss first below several bills that address much of what I have discussed so far, and I then turn to additional suggestions needed to help ensure that providers of all kinds have more timely and cost-effective access to the permits necessary to achieve our nation's shared broadband objectives.

Barriers and Regulatory Obstacles Avoids Deployment of Broadband Access and Needs Deregulatory Leadership or "BROADBAND Leadership" Act

This bill would take an important step to expedite obtaining permits at the state and local level specifically. Even in communities where broadband operators have strong and long-standing relationships with governmental entities and officials issuing permits, the "shot clock" and "deemed granted" provisions contained in the BROADBAND Leadership Act would add muchneeded certainty. Particularly for NTCA members operating in weather-shortened construction seasons, a better expectation of the time period in which permits must be approved or denied will facilitate planning of their infrastructure deployments.

In addition, the BROADBAND Leadership Act would tie fee structures directly to the specific costs incurred by a government entity related to the installation and upgrade of communications facilities. Dating back to its participation on the Rates and Fees working group of the Broadband Deployment Advisory Committee under the Federal Communications Commission, NTCA has been a vocal supporter of cost-based fees that enable governments to recover their actual and direct costs associated with processing applications and allowing use of rights-of-way. Ensuring that investment dollars expended in high-cost areas where grant funds are needed to enable deployment will go directly to connect consumers is the embodiment of efficiency and coordination among governmental agencies. In addition, much like the shot clock and the deemed granted provisions included within this legislation, the cost-based fee provisions – which the bill requires be publicly disclosed – would add predictability to the process, as NTCA members and other providers would be able to factor those in during their planning processes.

• Broadband Expansion and Deployment Fee Equity and Efficiency or "BEAD FEES" Act

The BEAD FEES Act would help ensure that BEAD program funds are expended as efficiently as possible and should encourage greater participation in the program. In its Notice of Funding Opportunity for the BEAD program, the National Telecommunications and Information Administration recognized the importance of permitting efficiency, specifically indicating that each state's initial proposal for BEAD funding must include "steps . . . to reduce costs and barriers to deployment, promote the use of existing infrastructure, promote and adopt dig-once policies, streamlined permitting processes and cost-effective access to poles, conduits, easements, and rights of way, including the imposition of reasonable access requirements." The

BEAD notice further clarifies that states and localities "are strongly encouraged to remove time and cost barriers associated with BEAD projects, including by expediting permitting timelines and waiving fees where applicable" The BEAD FEES Act complements these directives in the BEAD notice, providing direction from Congress itself as to what kinds of streamlining are expected and prompting states (which are the eligible entities for purposes of the BEAD program) to ensure that fees for access to public rights-of-way and other areas necessary for network installations and upgrades are cost-based and publicly disclosed.

• Reducing Barriers for Broadband on Federal Lands Act

The Reducing Barriers for Broadband on Federal Lands Act would represent a significant step forward in streamlining permitting processes. As noted earlier in this testimony, access to federal lands for the purposes of installing broadband infrastructure can be a lengthy and arduous process. Both environmental reviews under the auspices of NEPA, as well as preservation and consultation processes required by Section 106 of the NHPA, can take well over a year, holding up widespread efforts at deployment when only a small portion of a project touches federal land – perhaps involving only a few hundred feet of a project that spans hundreds of miles. While categorical exclusions from NEPA can provide some assistance today, these are not applicable to the NHPA processes. This bill would ensure more consistent treatment under the two statutes, exempting the installation of broadband infrastructure from both NEPA and NHPA under similar circumstances. This would represent a substantial leap forward in streamlining access to federal lands while also continuing to protect important historical and Tribal interests.

Networks or "TRUSTED Broadband Networks" Act

The TRUSTED Broadband Networks Act is a common-sense complement to broader federal efforts to secure our nation's communications networks. Given the priority placed upon removing as soon as reasonably feasible any equipment that has been found to present national security risks, it makes sense to ensure that replacement efforts are not then tied up in prolonged reviews under NEPA or NHPA.

• Observations on Other Legislative Measures

In closing, NTCA provides several thoughts with respect to other draft legislation presented by the Subcommittee for consideration.

First, it is important to ensure that the streamlining intended by the various measures will apply across network deployments of all kinds to the greatest extent possible and practicable. As an example of where this becomes important, a network constructed leveraging ReConnect or BEAD funding will typically be subject to NEPA and NHPA processes even if the network does not touch federal lands because federal funds are used in the project. Recognizing this, some of the bills presented at this hearing (such as the Proportional Reviews for Broadband Deployment Act) aim to exempt providers from NEPA and NHPA under such circumstances or provide similar relief. However, because these bills leverage definitions codified in existing law, the relief afforded would appear to be limited to "wireless facilities deployment," meaning that wireline providers would remain subject to NEPA and NHPA requirements where wireless providers are not. NTCA observes that the Broadband Resiliency and Flexible Investment Act

appears to address this concern by amending the underlying statute to include certain wireline facilities as well – but it is important to note that, absent such an underlying amendment, several of the measures under consideration here would seemingly apply to wireless facilities deployments exclusively. NTCA therefore asks that the Subcommittee pay close attention to this important detail, and to consider potential modification or clarification of these measures as necessary and appropriate to ensure that the intended benefits of streamlining flow fully to wireline facilities installation as well.

Second, the Enhancing Administrative Reviews for Broadband Deployment Act calls upon USDA and the Department of Interior to identify means of improving the efficiency of the communications use authorizations process. The study and report generated through this effort would undoubtedly contain effective insights from "inside the agencies" regarding potential improvements. It should be noted, however, that there should be no need specifically for the agencies to highlight staffing resource concerns as part of the report because, as noted earlier in this testimony, such concerns are already prevalent and well-known. Indeed, if NTCA could convey one point regarding how to make permitting processes more efficient, it would be that workforce development and training in this area must be seen as a critical piece of the puzzle. NTCA members have decades of experience in network deployment, and they consistently share concerns about understaffing and resources in permitting offices. While a comprehensive report would almost certainly indicate such concerns exist, there is no need to wait for a report to consider these issues and act now. Instead, NTCA urges Congress to work with federal agencies to determine what levels of staffing, training, and systems development are needed to process not only the backlog of permit applications already before them, but to handle the crush of requests

likely to come as BEAD and other efforts accelerate in the months and years ahead. Moreover, Congress should consider that local, state, and Tribal entities appear in some cases to face similar staffing shortages as well, and care to address these will be equally important to ensure that streamlining efforts realize their full promise.

Finally, NTCA welcomes continued congressional attention to timely and cost-effective access to poles and railroad crossings. While NTCA members have migrated increasingly to burying of network plant where possible for economic and resiliency reasons, there are parts of the country and challenges in certain areas that necessitate the continued reliance upon poles for broadband deployment. We look forward to continued conversations about how to streamline the process for, and to ensure reasonable costs associated with, pole access in furtherance of national broadband objectives. Similarly, NTCA encourages Congress to consider ways of ensuring that railroad crossings do not continue to present barriers to broadband deployment – including taking stock of measures in certain states that could provide an effective blueprint and considering whether the Federal Communications Commission already possesses or needs additional authority to preempt state laws that may contribute to such barriers.

Thank you again for providing NTCA with the opportunity to share these thoughts on behalf of its rural community-based broadband provider members. We look forward to working with this Subcommittee, other members of Congress, the federal agencies of jurisdiction, state and local governments, and other stakeholders to realize and sustain our nation's shared vision of universal broadband access.

Mr. LATTA. Thank you for your testimony. And, Mr. Saperstein, you're recognized for 5 minutes.

STATEMENT OF MICHAEL SAPERSTEIN

Mr. Saperstein. Chairwoman McMorris Rodgers, Ranking Member Pallone, Chairman Latta, Ranking Member Matsui, and members of the subcommittee, thank you for holding this timely hearing highlighting the importance of efficient and streamlined infrastructure permitting reform.

I am Mike Saperstein, senior vice president of government affairs and chief strategy officer for the Wireless Infrastructure Associa-

tion, WIA.

WIA represents the multitude of entities that make up the entire wireless ecosystem. We have never been closer to achieving our bipartisan goal of nationwide connectivity, making broadband available literally everywhere from dense urban corridors to rural farmland. To realize our shared connectivity goals, we must also account for significant consumer demand for broadband connectivity on the move. Mobile broadband has never been more available, affordable, accessible, and competitive than it is today. We should acknowledge this win for the American people even while we finish our work.

However—and this is the main message I want to impart today—infrastructure deployment is the fulcrum between the potential of historic broadband investment and the reality of universal connectivity. Our Nation's broadband potential will ultimately be limited by the barriers we do not remove. That's why to-

day's hearing is so important.

What we're doing here today is fundamentally in exercising good government and sound management. If universal connectivity is Congress' priority—and there are 65 billion reasons to believe it is—then we must identify the things within our control preventing us from achieving that priority. Permitting processes serve a function, but common sense tells that not every proposed action requires the same amount of scrutiny. And what we're asking for is straightforward.

We simply seek a predictable application process proportionate to the project that will be decided in a timely manner. And when the answer is no, let us know why that is, and let's work together to

resolve reasonable concerns.

Fortunately, we're not starting from scratch. We can build on the existing policy, much like we can build on existing physical infrastructure, and fill in the gaps that exist. Congressional action over the last decade, aided by the FCC's sensible interpretations, has been effective in reducing the gap between potential and actualized connectivity. And the results speak for themselves.

5G is being deployed at twice the speed of 4G. Siting activity in the 2 years following FCC reform exceeded the previous 7 years combined. And that's why these reforms must be maintained and strengthened as we attempt to cover the hardest remaining parts

of America.

Permit me to give a few examples of what WIA members experienced. Many jurisdictions were doing an end run around the application shot clock for colocation and minor modifications simply by

claiming things like the locality lacks processing procedures and the shot clock can't start until those procedures are established; or, most egregiously, simply refusing to accept an application to avoid

triggering the shot clock.

There was also endless debate about what constitutes a substantial change to the dimensions of a structure that make it eligible for streamline review that the FCC's 5G upgrade order resolved. The FCC's interpretation of congressional action has gone a long way toward solving this problem, and we see an increasing partnership with local communities that understand the value of wireless connectivity.

But the FCC's orders are subject to challenge. Today, the FCC's 2020 5G upgrade order is now under appeal in the Ninth Circuit. We appreciate the bills, like Chairman Latta's Wireless Leadership Act, that would codify and make permanent existing FCC interpretations.

In Congress' own backyard, siting on Federal lands continues to be a bedeviling issue despite prior congressional action. More than anything, WIA members seek clarity, accountability, and transparency with respect to permitting on Federal lands. Simple portals would help this.

Similarly, there are resource-driven review issues at the FAA that could also use congressional attention. WIA supports codifying streamlined environmental reviews which otherwise may not be commensurate with the undertaking and unnecessarily delay

broadband deployments.

Finally, WIA supports efforts to increase government's ability to prepare themselves for this increasing permitting demands across all divisions, Federal, State, and local—a crucial effort as broadband providers push to connect every corner of this Nation.

Removing broadband—barriers to broadband deployment has long been a bipartisan goal of Congress and the executive branch. We agree. We look forward to discussing today the slate of bills at issue to determine how we can help remove those barriers. Thank you.

[The prepared statement of Mr. Saperstein follows:]



Wireless Infrastructure Association

Testimony of

Michael Saperstein Senior Vice President, Government Affairs, and Chief Strategy Officer Wireless Infrastructure Association

Before the

Subcommittee on Communications and Technology Energy and Commerce Committee United States House of Representatives

Hearing titled

"Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment"

April 19, 2023

Chairman Latta, Ranking Member Matsui, Chairwoman McMorris Rodgers, Ranking Member Pallone, and members of the Subcommittee, thank you for holding this timely hearing highlighting the importance of efficient and streamlined infrastructure permitting processes to achieve our shared objective of universal broadband connectivity. I am Mike Saperstein, Senior Vice President of Government Affairs and Chief Strategy Officer for the Wireless Infrastructure Association (WIA). WIA is the principal association representing the companies that build, design, own, and manage mobile and fixed wireless broadband facilities nationwide. WIA members' efforts to deploy and upgrade wireless infrastructure are directly affected by permitting decisions daily, and we welcome the opportunity to share our perspective.

We have never been closer to achieving our bipartisan goal of nationwide connectivity — making broadband available literally everywhere from dense urban cores to the last rural acre. To realize our shared connectivity goals we must also account for the significant consumer demand for connectivity on the move. Indeed, the majority of commercial wireless traffic today is

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comprised of mobile broadband services. Broadband has never been more available, affordable, accessible, and competitive than it is today; we should acknowledge this win for the American people even if our work is not yet complete. However – and this is the main message I want to impart today – infrastructure deployment is the fulcrum between the *potential* of historic broadband investment and the *reality* of universal connectivity. Our nation's broadband potential will ultimately be limited by the barriers we do not remove; today's hearing will shine a welcome spotlight on the permitting issues that unnecessarily impede our progress.

WIA broadly supports legislation to ensure permitting issues do not prevent deployment. Congressional action over the last decade, aided by sensible implementation by the Federal Communications Commission (FCC), has been effective in reducing the gap between potential and actualized connectivity. These reforms must be maintained and strengthened as we attempt to cover the hardest remaining parts of America. WIA also supports further reforms that would streamline siting on federal lands, which requires continued focus because the process (that is entirely within the federal government's control) remains inefficient, presenting a barrier to deployment. WIA also supports streamlining environmental reviews, which too often are not commensurate to the undertaking and unnecessarily delay broadband deployments. Finally, WIA supports efforts to increase governments' ability to prepare themselves for the increased permitting demands, across all divisions at the Federal, State, and Local level — a crucial effort as broadband providers push to connect every corner of the nation.

Removing barriers to deployment has long been a bipartisan goal of Congress and the Executive branch.¹ That sentiment was captured perfectly just last week by Deputy Secretary of

¹ See, e.g., Letter from Senators Lujan, Barasso, et. al. to the Departments of Interior, Agriculture, and Commerce (Dec. 1, 2022) https://www.barrasso.senate.gov/public/_cache/files/8c803ecd-ee57-4d42-8809-

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Commerce Don Graves who highlighted "permitting, permitting, permitting" as one of the main issues preventing broadband deployment.² We agree and look forward to discussing how the slate

of bills at issue today can remove these barriers.

In the nearly three decades since Congress declared it the imperative of the FCC to facilitate the deployment of advanced telecommunications to all Americans, we have seen concerted efforts from all levels of government to make that vision a reality. Today's hearing is particularly relevant as we work to achieve our national mission of connecting all Americans, a mission that is closer than ever, yet still out of reach for too many. It is particularly relevant on the heels of the historic Infrastructure Investment and Job Act (IIJA) and as the Administration launches an effort to develop a National Spectrum Strategy. The impact of billions in federal infrastructure investment, as well as the impact of new spectrum freed for commercial use (from past and future actions), will be significantly enhanced by an equal commitment to accelerating and streamlining the

permitting process for responsible and sustainable infrastructure deployment.

While not the subject of this hearing, it is also essential that we continue to focus on two additional types of infrastructure, spectrum—the invisible infrastructure that physical infrastructure transforms—and human infrastructure—the workforce that builds, maintains, and operates wireless infrastructure. WIA appreciates the Committee's attention to the need for freeing up more spectrum for commercial use and your consistent effort to reauthorize the FCC's spectrum auction authority. Finally, we must also recognize the men and women working across the country

expanding access to highspeed internet—a top priority for our rural areas—and we cannot accomplish that without improving the permitting process."); The Biden-Harris Permitting Action Plan to Rebuild America's Infrastructure, Accelerate the Clean Energy Transition, Revitalize Communities, and Create Jobs (May 2022), https://www.whitehouse.gov/wp-content/uploads/2022/05/Biden-Harris-Permitting-Action-Plan.pdf (providing the Administrations strategies in ensure connectivity to all Americans, including permitting reform).

² Don Graves, Deputy Secretary of Commerce, https://ustelecom.org/american-connectivity-forum/ (40:03).

to make our networks operational and continue to focus our efforts on developing the workforce capable of meeting the broadband deployments needs of today and tomorrow. WIA is a national leader in workforce development for the mobile and fixed broadband industry and we appreciate the efforts Congress and the Administration have taken to make resources available for this purpose. WIA is committed to proactively working with stakeholders nationwide to ensure our communications workforce needs do not become an additional barrier to deployment.

I. Wireless Connectivity Has Never Been More Important or Available

It is important to acknowledge the role that wireless connectivity plays in our lives and how we got here, as it was not by accident. Ninety-nine percent of Americans have access to three or more providers of 4G LTE service.³ As impressive as that is given the physical size of our country, the wireless industry has raised the bar for itself with the transition to 5G. As a result, 315 million Americans are already connected to 5G, through a rollout that has been twice as fast as the pace of 4G—increasing from 200 million covered to 300 million in a single year. This explosive growth over the last decade was enabled through smart policies that promoted the rapid deployment of mobile networks by focusing on utilizing existing infrastructure, laying the foundation of the mobile ecosystem. Along with speed, 5G has brought the hidden benefit of capacity—we can connect far more devices on this network with more intensive use. Since 2015, average monthly traffic per smartphone increased nearly threefold from 5 GB per month to nearly 15 GB per month. Ericsson currently projects that number to increase to 52 GB per month by

 $\underline{https://censusnbm.com/doc/CensusNBM\%20358\%20All\%20Wireless\%20Broadband\%20Providers\%20by\%20State_\underline{pdf}$

³ CensusNBM, Report 358, Percent of US Housing Units with Access to Multiple Wireless Broadband Providers December 2020,

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2027.⁴ We are expecting 31 *billion* connected devices by the end of 2023.⁵ We can't do this without modern wireless networks.

5G coverage is also erasing historical wired/wireless distinctions of home broadband, as shown by the surge in consumers choosing fixed wireless access (FWA) broadband. Consumers are flocking to FWA broadband, with fixed wireless broadband service representing 90 percent of net new at-home broadband subscriptions last year.⁶ Why? Because it's affordable and it works! This growth is not unique to the U.S. either. Globally, nearly 20 percent of mobile traffic is over FWA to the home. In the next five years, monthly data usage is expected to grow nearly 30 percent, reaching over 85 exabytes (EB) per month.⁷

In solving our nation's digital divide issues, Congress recognized the value of fixed wireless when it made its Broadband Equity, Access, and Deployment (BEAD) program technology neutral. FWA broadband can bring speed to market and cost advantages over wireline solutions because it skips the time and cost of dragging miles of wires through the countryside while delivering the reliable service people need to power their online lives. All of this means that consumers win. FWA is making high-speed broadband available for the first time for millions of Americans, helping to rapidly close our digital divide, while providing more competition in the home broadband market, directly competing with wired broadband.

⁴ ERICSSON MOBILITY REPORT at 16 (Nov. 2022), https://www.ericsson.com/en/reports-and-papers/mobility-report.

⁵ The Wireless Industry: Industry Data, CTIA, https://www.ctia.org/the-wireless-industry/infographics-library (last visited Apr. 16, 2023).

⁶ Press Release, *About 3,500,000 Added Broadband From top Providers in 2022*, LIECHTMAN RESEARCH GROUP (Mar. 2, 2023), https://www.leichtmanresearch.com/about-3500000-added-broadband-from-top-providers-in-2022/ ("Top broadband providers added about 3.5 million subscribers in 2022. Fixed wireless services accounted for 90% of the net broadband additions in 2022, compared to 20% of the net adds in 2021.").

⁷ ERICSSON MOBILITY REPORT at 38 (Nov. 2022), https://www.ericsson.com/en/reports-and-papers/mobility-report.

All of today's wireless connectivity has resulted from concerted network investment coupled with a decade of smart policies that have prioritized this critical service. Today's wireless networks are the result of \$635 billion in investment over the lifetime of the industry and nearly \$50 billion in 2022 alone—the most investment in a single year by the wireless industry. America's neutral-host model of wireless infrastructure siting has enabled efficiencies that make it a world model. It allows service providers to deploy their networks further and faster than they could on their own and use capital more efficiently, all while helping to minimize the amount of infrastructure required in the community. A new report shows that WIA members' investment in physical infrastructure, which accounted for \$11.9 billion in 2022, manifests itself physically today in nearly 150,000 towers, 450,000 small cell nodes, 750,000 indoor small cell and distributed antenna system nodes undergirding our wireless networks. This also means good paying American jobs, with 400,000 employed in wireless infrastructure deployment to say nothing of the millions more jobs enabled by the wireless industry.

Investment and ingenuity have enabled wireless connectivity in ways that could not have been imagined only a decade ago. Our work continues today to extend the same wireless coverage benefits, particularly to rural areas to support mobile communications that are not only life changing but truly lifesaving, with 80 percent of 911 calls coming from mobile devices. Whether it is mobile broadband or FWA to the home, wireless broadband service is essential, and we need policies that promote greater availability – funding opportunities on a level playing field with

⁸ See, e.g., DEPARTMENT FOR SCIENCE, INNOVATION & TECHNOLOGY, UK Wireless Infrastructure Strategy, POLICY PAPER (Apr. 11, 2023), https://www.gov.uk/government/publications/uk-wireless-infrastructure-strategy/uk-wireless-infrastructure-strategy (outlining how realizing ubiquitous connectivity and the full promises of 5G will rely, in part, on supporting the neutral host model).

⁹ NENA, 9-1-1 Statistics, https://www.nena.org/page/911Statistics (last visited Apr. 16, 2023) (stating that, of the estimated 240 million 9-1-1 calls made in the U.S. each year, 80% or more come from wireless devices).

wireline technologies, more spectrum for commercial use, and efficient permitting processes. That is why this hearing is so important. While these policies enabled significant growth, many are based on agency interpretation that could change for a variety of reasons. Codifying these interpretations will ensure that rules and regulations keep pace with the technology; and America can maintain the leadership established during the 4G era into future generations.

II. Our National Broadband Potential is Limited by Barriers to Infrastructure Deployment

Today's wireless uses and tomorrow's wireless possibilities are the result of infrastructure intentionality. Congress was intentional in setting aside spectrum to fuel mobile voice and broadband services. Congress was intentional in devoting unprecedented funding to close the digital divide just as the wireless industry has been devoting hundreds of billions in its own private capital towards the same goal. And, perhaps most importantly, Congress has been, and must continue to be, intentional about reducing the barriers to deployment in proportion with the impact the infrastructure has. As discussed below, Congress has made progress on removing barriers to wireless infrastructure in the past, but we still have significant work to do to deploy connectivity everywhere and to continually improve networks. Congress must remain vigilant on this front. All of this has gotten us to the 5G networks of today, but the future will require even more from Congress to maintain American leadership in wireless connectivity, which ultimately enables the American economy and way of life.

A. Previous Congressional Action Has Enabled Wireless Infrastructure Deployment and Must be Maintained

Congressional action, aided by sensible FCC implementation, has been effective in reducing barriers to deployment. ¹⁰ In particular, Congress' enactment of section 6409 in the 2012 Spectrum Act and the FCC's subsequent interpretive orders have led to significantly more efficient siting of facilities that do not substantially alter the physical environment. Most recently, the FCC's 2020 5G Upgrade Order made crucial clarifications to Commission's regulations implementing section 6409 regarding shot clock determinations and when the siting of new facilities would be considered a "substantial change" in physical dimensions under the law. ¹¹ Similarly, the FCC's 2018 Orders streamlined the deployment of small wireless facilities by clarifying the scope of local authority, curbing excessive fees and instituting shot clocks for state and local review. The FCC did this by making use of the tools Congress provided in Sections 253 and 332 of the Communications Act to promote 5G infrastructure. Relatedly, the FCC used the statutory provisions of section 253(a) to ban siting moratoria while still respecting the role of local governments. Data shows that such reforms were effective, with siting activity in the subsequent two years exceeding the previous seven years combined. ¹²

¹⁰ See, e.g., Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96 at Sec. 6409, codified at 47 U.S.C. § 1455(a); Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012, Declaratory Ruling, 35 FCC Rcd 5977 (2020) ("5G Upgrade Order"); Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, 30 FCC Rcd 9088 (2018) ("Small Cell Order"); Accelerating Wireless Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order, 29 FCC Rcd 12865 (2014) ("2014 Order").

¹¹ Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012, Declaratory Ruling, 35 FCC Rcd 5977 (June 10, 2020) (*5G Upgrade Order").

¹² CTIA, 2021 Annual Survey Highlights, at 5 (July 17, 2021), https://www.ctia.org/news/2021-annual-survey-highlights.

The permitting barriers removed via FCC interpretation of statute are critical but remain under attack notwithstanding the agency's orders being affirmed on appeal. ¹³ For example, currently the FCC's 2020 5G Upgrade Order is under challenge at the U.S. Court of Appeals for the 9th Circuit. ¹⁴ That important decision providing clarifications of the plain language of the FCC's 2014 rules was adopted by the prior Administration's FCC and is being defended today by the FCC under the leadership of Chairwoman Rosenworcel, with WIA's full support. If the FCC's rules are overturned, it would be a major setback for the future of siting wireless infrastructure and in turn our nation's wireless service objectives. Accordingly, while the FCC's existing rules must be respected, WIA supports efforts to codify the FCC's interpretive decisions, and several bills included in the package for discussion today aim to do so. This includes the WIRELESS Leadership Act and BROADBAND Leadership Acts, which would make permanent reforms to shot clocks and prevent unreasonable fees among other changes similar to previous FCC reforms.

B. Congress Should Seek to Further Remove Barriers to Broadband Caused by Government Review

Even with previous Congressional and FCC action, it is apparent that our broadband future depends on continuing to remove barriers to infrastructure deployment, largely permitting related.

And it is clear, unfortunately, that some permitting authorities will only respond if Congress acts

¹³ City of Portland v. United States, 969 F.3d 1020 (9th Cir. 2020), cert. denied, City of Portland v. FCC, 141 S. Ct. 2855 (2021) (largely upholding the FCC's decisions to implement limitations on rules for siting small wireless facilities); Montgomery County v. FCC, 811 F.3d 121 (4th Cir. 2015) (affirming 2014 order implementing section 6409)

¹⁴ League of CA Cities, et. al. v. FCC, No. 20-71765 (and consolidated cases Nos. 20-72734 and 20-72749) (9th Cir.)

clearly. 15 Accordingly, there are several themes in the bills proposed for discussion that build on prior legislative and FCC actions, which WIA supports Congress exploring.

First, Congress can set a national example by ensuring the expedient deployment of wireless communications in its own backyard, on federal lands. Members report that permitting on federal lands continues to be one of the most time-consuming and unpredictable of all permitting processes. Given the nature of the areas that remain unserved today, siting on federal lands will be increasingly necessary to meet national service objectives. Further, there are real safety concerns if wireless connectivity is unavailable in parklands to aid visitors in distress.

More than anything, WIA members seek clarity, accountability, and transparency with respect to permitting on federal lands. While there is some degree of expected variance among agencies managing federal property, members often report that requirements and rules can be in conflict even within the same agency at different offices. This is why measures directed at harmonizing requirements across agencies and ensuring these applications are acted on in an expedient manner are needed to provide consistency and predictability across federal lands. In particular, measures that would direct federal agencies to develop online application portals have the potential to significantly expedite the permitting process. However, agencies will need initial support to stand up these improvements that should not come from existing fees. WIA supports Congress appropriating additional funds to begin these initiatives which can then be sustained through the agencies' costs-based fees.

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¹⁵ See, e.g., T-Mobile West LLC v. City and County of San Francisco, No. 20-cv-08139, 2023 U.S. Dist. Lexis 37408 (N.D. Cal. Mar. 2, 2023) (holding San Francisco's refusal to comply with FCC Section 6409 rules governing simple modifications of existing installations had "no foundation in law or logic").

Second, Congress is correct to consider whether exemptions to the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) are warranted for certain types of wireless deployments. A number of the bills presented seek to do so and WIA is broadly supportive of these reforms. These measures take pragmatic steps to remove overly proscriptive rules that put additional, and unnecessary strain on the resources of both government and industry. Environmental and historic review processes are important, but the exception has started to swallow the rule with minimally disruptive modifications potentially being mired in months of review and approval. The nature of the equipment and installations at issue is such that the tradeoff between timely communications deployment and protracted review counsels in favor of an exclusion in many instances.

Third, WIA is also broadly supportive of efforts to increase state and local governments' ability to prepare themselves for the increased permitting demands both as BEAD funding is deployed and wireless service providers continue their 5G rollouts. To this end, WIA appreciates NTIA's guidance this year providing "examples of best practices and streamlined permitting." ¹⁶ Broadband ready communities—those that prepare themselves for both wireless and wired infrastructure—will reap the rewards in terms of faster availability of communications services for their citizens. There are many elements to broadband deployment that can involve other utilities too, like power supply, which can also add delay if not sufficiently supported by the local utility. Extensive power design and delivery timelines create significant hurdles to wireless connectivity. In many cases, timelines to deliver electricity to power communications facilities at small cell and tower sites are the longest of all timelines in the authorizations process. Improved policies are

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¹⁶ BROADBAND EQUITY, ACCESS, AND DEPLOYMENT PROGRAM, Examples and Best Practices of Streamlining Permitting (Mar. 2023), https://broadbandusa.ntia.doc.gov/sites/default/files/2023-03/Permitting Best Practices Case Studies.pdf.

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needed to ensure that connectivity opportunities are not needlessly wasted due to delays in

delivering power to communications infrastructure and equipment. We encourage NTIA to

continue its efforts to provide resources for communities on how to streamline their existing

processes.

One reform not included in today's package but that has become a significant barrier to

new wireless infrastructure deployment and network upgrades is the Federal Aviation

Administration's (FAA) obstruction evaluation process. For wireless infrastructure that is either

above certain height thresholds, within proximity to an airport, or making use of certain

frequencies, the FAA must approve that infrastructure use (for new tower construction or

modifications to existing infrastructure). While the FAA's charge is not limited to approving

communications equipment, the deployment of wireless infrastructure has undoubtedly been

unacceptably delayed over the past year. One WIA member reports that the average FAA cycle

time has increased tenfold over the past year—from 21 days in the first quarter of last year to 221

days (over 8 months) in the first quarter of 2023. Reports of the process taking nine months to a

year are common. WIA's understanding is that the issue is resource-based, and Congress should

seek to either provide the FAA more resources or study ways to eliminate certain classes of review

to reduce the workload and resulting application backlog.

Today's hearing is proof that this Committee is committed to ensuring we are not tying our

own hands in our goal to connect every American. Thank you for inviting me to testify and I will

be glad to address any questions you have.

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Mr. Latta. Well, thank you for your testimony. Mr. Falcon, you are recognized for 5 minutes.

STATEMENT OF ERNESTO FALCON

Mr. Falcon. Chairman Latta, Ranking Member Matsui, and members of the subcommittee, my name is Ernesto Falcon, and I'm the senior legislative counsel for the Electronic Frontier Founda-

tion. Thank you for inviting me today to speak with you.

My organization has been around for more than 30 years and is focused on the simple premise that a person's rights and liberties are maintained—must be maintained or enhanced as technology advances. We have been at the forefront of studying the future of broadband access and how to get it to everyone because without 21st century right of connectivity, you are not a full participant in

We have conducted in-depth research and produced publications on the issue from both the legal and technical perspective. And for years I have led the organization's research and analysis work and have interviewed with the CEOs of ISPs, municipalities, industry consultants, cooperatives, financial experts, and many others involved in our broadband ecosystem. I hope to be of assistance to the subcommittee as we dig into how to ensure the success of BEAD.

One thing is clear: Fiber infrastructure underlies the advancement of all broadband access options, from fixed wireless to satellites to wireline. The IIJA Priority Broadband Projects Provision is arguably one of the smartest course corrections we have made in telecom policy. Now, Federal dollars must be spent on future proof networks so we do not have to continually play a game of catchup.

In the past, we have spent billions subsidizing good-enough-fornow access only to find all of it obsolete within a few years. Now, Congress and the Biden administration have set forth a path for every State to deliver 21st century access infrastructure through

fiber that will not need to be replaced for decades to come.

Two objectives I think we all share here are predictable construction timelines and standardized costs when accessing public land, and the unnecessary cost driver is delay. And I also think a lot of good can be done with standardizing fees when accessing public land in a way that is consistent and logical. There are fee structures out there that I have witnessed that actively undermine fiber deployment, and I detail that in my written testimony. Those types

of structures would undermine the goals of BEAD.

And I understand the attractiveness of shot clocks with deemed granted, and policies should favor expeditious review of permits to enhance BEAD, but the reality is increasing staffing resources to the relevant permitting agencies will likely yield better results. Most communities are eager, but resource constrained, to work with the ISPs to expand access, and ISPs are not able to know of all the possible complicating factors a public land might hold without involving the government agency in charge of managing it. And in terms of cities, ISPs are not fully aware of a city's infrastructure or the current status of the rights-of-way without the help of the local government.

And any number of complications may occur if we view deployment as a unilateral matter. These need to be done in collaboration. Furthermore, running over local power I believe risks forgetting what we learn—what—forgetting what happened last time we did this nearly 20 years ago with a consolidation of franchise authorities in most States at the advent of fiber to the home.

Study after study have showed that large ISPs favored the most lucrative targets of a community while foregoing equal upgrades to less desirable areas. This has created a two-tier broadband market where wealthy areas enjoy fiber-based broadband with faster speeds and lowering prices while low-income areas are still stuck with legacy access that is both slower and more expensive. As part of IIJA, Congress found it necessary to remedy this problem by creating the digital discrimination rulemaking authority at the FCC.

So it's important to keep local power involved to give them—and give them the flexibility to work with ISPs to ensure equitable outcomes.

We cannot forget the E in BEAD. And local governments have traditionally served as the party to represent the interest of local communities. And we can't lose sight of the fact that a successful BEAD is one that delivers broadband access to all people without exception.

Thank you again for inviting me here to speak. I look forward to your questions and hope to be of assistance.

The prepared statement of Mr. Falcon follows:



Testimony of Ernesto Falcon, Senior Legislative Counsel Electronic Frontier Foundation

Before the U.S. House Committee on Energy and Commerce Subcommittee on Communications and Technology

Legislative Hearing On:
"Breaking Barriers: Streamlining Permitting to
Expedite Broadband Deployment."

Washington, DC April 19, 2023

Testimony of Ernesto Falcon, Senior Legislative Counsel Electronic Frontier Foundation

Before the U.S. House Committee on Energy and Commerce Subcommittee on Communications and Technology

Legislative Hearing On: "Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment."

April 19, 2023

Chair Latta, Ranking Member Matsui, Members of the Subcommittee, my name is Ernesto Falcon. I am the Senior Legislative Counsel for the Electronic Frontier Foundation (EFF). The EFF is the leading nonprofit organization defending civil liberties in the digital world. Founded in 1990, EFF champions user privacy, free expression, and innovation through impact litigation, policy analysis, grassroots activism, and technology development. With over 35,000 dues-paying members and well over 1 million followers on social networks, we focus on promoting policies that benefit both creators and users of technology.

My organization has been at the forefront of studying the future of broadband access in the high-speed market because without 21st century ready connectivity, you are not a full participant in society. We have conducted in-depth research and produced publications on the issue from both a legal and technical perspective. For years, I have interviewed ISPs, both big and small, consultants, municipalities, cooperatives, financial experts, and advocates for schools, libraries, and telehealth. My research asked two key questions in broadband policy: 1) What does 21st century access to the internet look like, and 2) What were the mistakes we've made in past policy decisions that prevented us from being there now?

The answer to the first question is straightforward, fiber optics. Fiber infrastructure underlies *all* advancements in broadband access today from satellites to fixed wireless to wireline. The answer to the second question is more complex and layered, and I appreciate the opportunity to share what I have learned with the Subcommittee in hopes of building on the successful policies initiated under the bipartisan Infrastructure Investment and Jobs Act (IIJA).

The Success of the Broadband Equity Access and Deployment (BEAD) Program is Critical to Our International Competitiveness

The EFF's goal in broadband access is focused on the deployment of universally available, affordable, and competitive fiber networks. EFF's focus on fiber is due to its properties as the <u>only</u> data transmission medium capable of low latency and cost-efficient capacity upgrades for generations to come, once built. We were original sponsors of the California broadband infrastructure law (S.B. 156) that promises to deliver the largest deployment of open-access fiber of any state throughout its rural and urban unserved and underserved areas.

We were also strong supporters of the "priority broadband project" provision of the IIJA that requires federal investments to focus on future-proof infrastructure that was scalable, able to meet evolving needs of households and businesses, and able to support 5G and successor wireless technologies. This prioritization of fiber infrastructure (except for "extremely high-cost" areas) by Congress and the Biden Administration is both necessary and essential for the United States to remain economically competitive with countries like China.

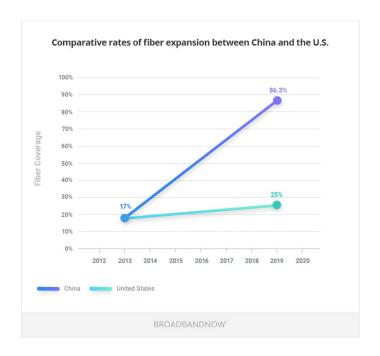
A published report by BroadbandNow¹ assessed that China's fiber infrastructure program has been building fiber connections *mine times faster* (chart on following page) than the United States since 2013. The country's "Belt and Road Initiative," which has been its global development infrastructure strategy, had allowed China to run laps around the U.S. communications infrastruture on not just on fiber to the home (FTTH) but on 5G as well.² This is due to the convergence between FTTH and 5G (a vast majority of advanced wireless services are actually fiber wireline based) that Chinese telecommunications companies leveraged. China Telecom openly stated their plan to have both a universal fiber network with 5G deployment riding on top of the wires.³

¹ Tyler Cooper, China's Fiber Broadband Internet Approaches Nationwide Coverage; United States Lags Several Behind, BROADBANDNOW (Dec. 3, 2019), available at https://broadbandnow.com/report/chinas-fiber-broadband-approaches-nationwide-coverage.

² Susan Crawford, China Will Likely Corner the 5G Market – and the US Has No Plan, Wired (Feb. 20, 2019), available at https://www.wired.com/story/china-will-likely-corner-5g-market-us-no-plan.

³ Alan J. Weissberger, China Telecom to Accelerate 5G Deployment; 100% Fiber Network Coverage; Gigabit Fiber

³ Alan J. Weissberger, China Telecom to Accelerate 5G Deployment; 100% Fiber Network Coverage; Gigabit Fiber Broadband Deployment, IEEE COMMUNICATIONS SOCIETY, (Mar. 19, 2019), available at



This is why the EFF in 2019 declared that federal and state policymakers needed to come up with "fiber for all" plans4 in order to catch up. With the passage of IIJA and the various state infrastructure laws coming online, the United States now has the requisite focus and resources deployed to achieve a national upgrade towards 21st century ready infrastructure, but barriers still remain. EFF believes careful updates and recalibrations of federal, state, and local laws will ensure the promise of the NTIA's Broadband Equity Access and Deployment (BEAD) program can be fulfilled. However, careful attention must be paid to ensure access is delivered to everyone while changing regulations to assist industry deployment.

 $[\]underline{https://techblog.comsoc.org/2019/03/19/china-telecom-to-accelerate-5g-deployment-100-fiber-network-coverage-100-fiber-network$

gigabit-fiber-broadband-deployment.

Emesto Falcon, The U.S. Desperately Needs a "Fiber for All" Plan, Electronic Frontier Foundation (March 22, 2019), available at https://www.eff.org/deeplinks/2019/03/us-desperately-needs-fiber-all-plan.

Why the Future Points Towards Fiber Infrastruture

Every community will need fiber-based infrastructure as envisioned by the Biden Administration. Future innovations in applications and services will rely on multi-gigabit near instantaneous transmission of data possible as soon a decade from now. Federal policy now appropriately presumes that usage will always grow. Since the 1980s, consumer usage of the internet has grown by 21% on average every year and that rate of growth has only shown signs of increasing, not decreasing.⁵

Using Openvault's finding that average use in 2021 was 207 Mbps downstream and 16 Mbps upstream, applying a 21% annual growth places usage in 2026 as over 500 Mbps downstream and 40 Mbps upstream. By 2032, average use will be nearly 2 gigabits downstream. Even conservative estimates for demand in rural areas predict the need for gigabit speeds by 2029.

Crucially, downstream and upstream growth are not equivalent, with consumer need for upstream data growing at an even faster pace. As the pandemic underscored, people are moving toward remote socializing, remote learning, remote work, telehealth, and various other services that require high upstream speed and capacity as well. In fact, services reported an increase of 56% in upstream traffic in 2020 alone. This was not an aberration; these are the new facts of life when it comes to the provisioning of broadband service and upstream-limited infrastructure will be ill suited for the shift.

⁵ Doug Dawson, Why Fiber?, CircleID (February 13, 2021), available at https://circleid.com/posts/20210213-why-fiber/

⁶ Emesto Falcon and Katharine Trendacosta, *The Future Is In Symmetrical, High-Speed Internet Speeds*, Electronic Frontier Foundation (July 2, 2021), *available at* https://www.eff.org/deeplinks/2021/07/future-symmetrical-high-speed-internet-speeds; See also Presentation, *Week 2: Why Fiber is the Only Future Ready Broadband (January 12, 2022)*, Fiber Broadband Association's Fiber for Breakfast (January 12, 2022), *available at* https://www.fiberbroadband.org/page/fiber-for-breakfast

⁷ The Rural Digital Divide: Fiber Broadband Can Eliminate The North American Rural Digital Divide, Fiber Broadband Association (June 2021), https://www.fiberbroadband.org/p/cm/ld/fid=978
8 Dan O'Shea, Pandemic Drove Upstream Broadband Traffic Boom: Openvault, Fierce Telecom (April 1, 2021),

⁸ Dan O'Shea, Pandemic Drove Upstream Broadband Traffic Boom: Openvault, Fierce Telecom (April 1, 2021), available at https://www.fiercetelecom.com/telecom/pandemic-drove-upstream-broadband-traffic-boom-openvault

To contextualize the increase in average use, consider the many critical services that now require both high upstream and downstream capacity. At the start of the pandemic, the surge in home usage led to a massive degradation of service for capacity constrained networks. The cable networks operators and legacy telecoms dependent on copper wires were not ready to handle what we now consider normal volumes of data usage. 9 Contrary to what many allege, American broadband infrastructure did not handle the widespread transition to remote well.

While most businesses will not transition to a 100% remote workforce going forward, nearly 80% of businesses now have work-from-home policies, signaling that remote work, and the demands it places on networks, is here to stay. ¹⁰ The white-collar economy is no longer urban high rises, but suburbs, multi-tenement apartments, and Americans in rural areas who will all require a reliable, fast network to participate and contribute to the American economy.

Rural economies also increasingly require high quality, reliable broadband. Essential economic endeavors like agriculture, forestry, mining, and energy production are best suited to rural areas and, with increasing digitization, need greater speeds and capacity to remain competitive. Precision farming requires the use of ground sensors, drones, and satellite data to analyze the needs of the soil and monitor applications of water and nutrients on a foot-by-foot basis. 11

Beyond what is necessary for the future of work, drastically higher upstream speeds to the point of requiring symmetrical usage will be necessary for the future of person-to-person communication (telehealth, videoconferencing, distance learning) and entertainment. All these services require high upload speeds to establish a reliable connection. AR/VR technology as recreational entertainment and business uses will likely require higher upstream than downstream speeds to properly function. ¹²

⁹ Cecilia Kang, Davey Alba, and Adam Satariano, Surging Traffic is Slowing Down Our Internet, New York Times (May 20, 2020), available at https://www.nytimes.com/2020/03/26/business/coronavirus-internet-traffic-speed.html
¹⁰ The Future of Work: Analyzing Glob al Broadband Trends, Fiber-To-The-Home Council Global Alliance (July 31, 2021), available at https://www.tthcouncil.eu/knowledge-centre/all-publications-and-assets/233/the-future-of-work-analyzing-global-broadband-trends.

¹¹ Supra note 7

¹² Cloud AR/VR Whitepaper, GSMA Future Networks (April 26, 2019), available at https://www.gsma.com/futurenetworks/wiki/cloud-ar-vr-whitepaper/.

The discussed projections only calculated usage out 10 years and all findings unanimously point toward the need for, at the very least, a gigabit connection for each person. Because usage will always grow, twenty years from now user demand could conservatively be in the realm of 6 gigabit per second symmetrical speeds.

History Shows us That Overriding Local and State Power Has Not Promoted Equitable Distribution of Broadband

Several proposals before the Subcommittee today, I believe, address parts of the puzzle to ensuring the successful implementation of BEAD, and I will suggest additional areas the Subcommittee should consider if it is to move a package to enhance BEAD's chances of success. However, we should remember some of the lessons we have learned along the way here. Past deregulation efforts did not lead to equitable deployment of broadband, but rather gave us digital redlining problems even in areas that were completely profitable to serve in the long run.

In 2005, the Federal Communications Commission (FCC) made a foundational decision on how broadband competition policy would work with the entry of fiber to the home. In short, the FCC concluded that competition was growing, government policy was unnecessary in deference to market forces, and that the era of communications monopoly was rapidly ending. We explored at length 13 why the FCC was wrong, but there is more to the history. The federal decision to deregulate broadband was later followed by the decisions of many states, including California, 14 to eliminate the local power of cities at the request of companies like Verizon and AT&T at the advent of FTTH.

 $^{^{13}\,}Blake\,Reid\,and\,Elliot\,Browning, Managing\,Last-Mile\,Monopolists:\,Reevaluating\,Sharing\,Obligations\,for\,the$ Modern U.S. Wireline Broadband Market, Samuelson-Glushko Technology Policy Clinic at Colorado Law (May 3, 2019), available at https://tlpc.colorado.edu/tlpc-releases-white-paper-for-eff-reevaluating-sharing-obligations-forthe-modern-u-s-wireline-broadband-market/.

¹⁴ Eric Bangeman, California Rewrite Cable TC Franchise, Ars Technica (September 1, 2006), available at

https://arstechnica.com/tech-policy/2006/09/7641/

States began to consolidate local "franchises" into single statewide franchise agreements with ISP-backed laws, but not all states made that mistake. EFF researched ¹⁵ the differences such decisions made and found wide discrepancies in broadband deployment. For example, in New York, where local franchising was maintained, New York City through local power was able to push the industry to connect hundreds of thousands of low-income households with FTTH. Meanwhile, the County of Los Angeles, which EFF estimates can deliver fiber in up to 95 percent of its territory ¹⁶ commercially—without subsidies—languishes at 40% FTTH coverage today with systemic digital redlining. ¹⁷

New York City understood that with its massive population, wealthy communities, business sector, and density, Verizon could provide fiber to every single home and signed that into a franchise in 2008. When Verizon discontinued its fiber service expansion in 2010, the city reminded the company that they had an agreement. The city decided to take Verizon to court to enforce their franchise in 2014, and while the litigation was lengthy, the city secured a settlement from Verizon to build another 500,000 FTTH connections to low-income communities. ¹⁸

This wide difference between two similarly situated communities provides a key lesson for the Subcommittee as it contemplates the power balance between local communities and ISPs. Something must be in place to ensure equity in the deployment of broadband and typically that is through local governments. We can't forget the "E" in BEAD.

While all of us want broadband networks to be deployed faster, a careful balance must be struck if we want broadband delivered to everyone. When we lose track of that balance, such as

¹⁵ Supra Note 13.

¹⁶ Benoît Felten and Thomas Langer, Wholesale Fiber is the Key to Broad US FTTP Coverage, Diffraction Analysis (October 27, 2021), available at https://www.eff.org/document/wholesale-fiber-key-broad-us-fttp-coverage at page 32

¹³ Heman Galperin, Thai Le, Kurt Daum, Who Gets Access to Fast Broadband? Evidence from Los Angeles County, USC Annenberg (October 8, 2019), available at https://amicusc.org/publications/who-gets-access-to-fast-broadband-evidence-from-los-angeles-county-2014-17/.

18 Scott Moritz, Verizonto Expand NYC Broadband Access, Settling Suit with City, Bloomberg (November 24,

^{*}Scott Montz, Verizonto Expand NYC Broadband Access, Settling Suit with City, Bloomberg (November 24, 2020), available at https://www.bloomberg.com/news/articles/2020-11-24/nvc-says-verizon-settlement-to-build-out-high-speed-internet.

the FCC's Small Cell Order, the local government ends up with the cost burdens ¹⁹ with little to show for it in regard to improved access for low-income and unserved communities.

Congress recognized this problem by mandating that the FCC create rules with its new Digital Discrimination authority at the same time it created BEAD. Study²⁰ after study²¹ after study²² showed that major national ISPs have decided to invest in fiber-optic infrastructure in wealthy neighborhoods in large densely populated cities while skipping *profitable to serve* low-income neighborhoods in those same cities simply because the returns were not enticing enough. The result of this digital redlining has been the formation of two-tiered broadband infrastructure where wealthy communities easily access 21st century opportunities with low-cost, fast Internet while everyone else is left behind. The most recent report by The Markup detailed the extent this problem has been repeated across the country.²³

Overall Goals Should be Predictable Construction Timelines and Standardized Costs

Broadly speaking, the most important positive goals to legislating here will be providing private, public, and non-profit sector applicants with *predictable timelines* when entering the construction phase as well as *standardized fees* when accessing federal and state lands. Predictability is essential because delays result in increased labor costs with no countervailing benefit, which may turn a project that was once viable into a failure. Standardization is critical because the transition to fiber has changed how this infrastructure can be financed as well as the

¹⁹ Stretched Thin and Feeling the Squeeze, The Harmful Effects of Small Cell Preemption on Local Government, National Association of Telecommunications Officers and Advisors (March 2021), available at https://assets.noviams.com/novi-file-uploads/natoa/20210317_NATOA_CWAReport.pdf
²⁰ Vincent Le and Gissela Moya, On the Wrong Side of the Digital Divide: Life Without Internet Access, and Why

²⁰ Vincent Le and Gissela Moya, On the Wrong Side of the Digital Divide: Life Without Internet Access, and Why We Must Fix It in the Age of COVID-19, The GreenLining Institute (June 2, 2020), available at https://greenlining.org/publications/online-resources/2020/on-the-wrong-side-of-the-digital-divide

https://greenlining.org/publications/online-resources/2020/on-the-wrong-side-of-the-digital-divide.

²¹ Galperin, H., Bar, F., Kim, A.M., Le, T.V., Daum, K., Who Gets Access to FastBroadband? Evidence from Los Angeles County, Spatial Analysis Lab at USC Price, Annenberg School for Communication (Sept. 2019), http://amicusc.org/wp-content/uploads/2019/10/Policy-Brief-4-final.pdf.

²² Communications Workers of America & National Digital Inclusion Alliance, AT&T's Digital Redlining Leaving

²² Communications Workers of America & National Digital Inclusion Alliance, AT&T's Digital Redlining Leaving Communities Behind for Profit (Oct. 2020), available at https://cwa-union.org/sites/default/files/20201005attdigitalredlining.pdf.

²³ Leon Yin and Aaron Sankin, *Dollars to Megabits, You May Be Paying 400 Times As Much As Your Neighbor for Internet Service*, The Markup (October 19, 2022), *available at* https://themarkup.org/still-loading/2022/10/19/dollars-to-megabits-you-may-be-paying-400-times-as-much-as-your-neighbor-for-internet-service.

models. For example, it is now realistic for many new providers such as cooperatives, small local private, and public sector entities to approach these deployments with 10-to-30-year repayment plans because the fiber infrastructure will remain useful for decades beyond. Given that a supermajority of Americans view broadband as essential to their lives as water and electricity, the demand will remain stable, much like it did for electricity during rural electrification. The Department of Agriculture is fond of pointing out that no one defaulted on a loan from that era due to the sustained demand.

Many of the bills before the Subcommittee emphasize shot clocks and removing environmental reviews as the solution to the permitting process. The most expensive parts of deploying the network are the one-time sunk costs that come with the public works making up nearly 60-80 percent of a network deployment costs. ²⁴ With fiber-optic infrastructure, getting it right the first time will provide a community with capacity that will last for decades, because future advancements in speed will only require changes in hardware, not additional construction. Understandably, shot clocks with deem-granted provisions are attractive and EFF has heard of certain instances where a city or incumbent pole owner is dragging their feet on approving a permit even for routine matters. We agree that it would be appropriate to direct some pressure toward reasonable timeliness in routine approvals such as utilizing an already existing right-of-way for incidental changes. However, the lion's share of the challenge is likely due to the lack of resources and staff available to process the volume of incoming requests.

H.R. 1241 Creates a Win-Win Scenario for ISPs and Local Communities

The amount of funding the federal government and states are providing to build broadband infrastructure is staggering. Building a broadband network is a public works project at a scale most communities have not seen in decades, so naturally the staffing in place to handle the construction is missing. This is why Congresswoman Fletcher's legislation, H.R. 1241, the

²⁴ EUROPEAN COMMISSION, Analysys Mason: Support for the Preparation of an Impact Assessment to Accompany an EU Initiative on Reducing the Costs of High-Speed Broadband Infrastructure Deployment at 36, <a href="http://ec.europa.eu/digital-agenda/en/news/support-preparation-impact-assessment-accompany-eu-initiative-reducing-costs-high-speed; See also INTERNATIONAL TELECOMMUNICATION UNION, Cost Analysis for Fiber to the Home, http://www.ictregulationtoolkit.org/en/toolkit/notes/PracticeNote/2974.

"Broadband Incentives for Communities Act," is likely a win-win for both industry and communities motivated to facilitate their entry while protecting the public interest at the same time. It recognizes that broadband deployment is a mutual endeavor between cities and industry given the need for coordination between city assets and the deployment schedule.

Furthermore, new ways to utilize the rights-of-way are emerging to meet the demand for new fiber given the crowded nature of existing rights of way infrastructure. The legislation promotes additional methods of utilizing the rights-of-way with Sec. 3(b)(2)(B) by promoting expedited processes for things like micro-trenching. One suggestion I can make to the bill is establishing a method to take best practices beyond just the covered entity to help promote their adoption and standardization. EFF supported legislation in California that standardized micro-trenching rules for communities to help take the guesswork out of each local jurisdiction, which helped advance the deployment of new fiber providers.

To truly maximize the benefits of BEAD, at least as much attention must be paid to the staffing resource needs of permitting agencies, if more shot clocks are instituted to ensure predictable timelines. Otherwise, the lack of coordination could result in a lose-lose situation where public property is damaged in a way that makes the right-of-way unusable. For example, a rush to deploy could result in damaging critical electrical or gas lines.²⁵

Standardized Costs on Public Lands

Fees for use of public lands based on obsolescent models or seemingly arbitrary scales can be detrimental to the deployment of future-proof fiber. For example, EFF knows of an open-access fiber provider in California called Netfly Fiber, ²⁶ which originally designed a plan to deploy 10,000+ strands of fiber optical wire throughout a community. Such capacity could be useful, potentially into the 22nd century, with the advancements in hardware that fiber could leverage; however, because a portion of their network had to pass a railroad, forcing a portion of the network to reduce its fiber count to below 432 strands. This was due to the incidental use fees

²⁵ Supra Note 19.

²⁶ See more about Netfly here: <u>https://www.netlyfiber.com/about-us/</u>

(see chart below) set by the county being designed around a deployment model where each household (and each individual wire) would pay a large subscription fee early and the county would recover a portion of it. An open-access model is premised on leasing *excess capacity* to multiple users at low costs and cannot operate on a per wire charge basis that would inherently penalize its future proof capacity. The result of this use fee structure was less fiber (and therefore less future-proof capacity) being provisioned to the portion of the community that was literally on the wrong side of the tracks.

Incidental Use Fees

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Set-Up and Administration	
Incidental Use Viability, Negotiations & License Set-Up Fee (One-Time)	\$1,500
Administration Fee (Recurring Annually)	\$190
Incidental Use Fees (Recurring Annually)	
Standard Transverse Wireline Crossing (Electric, Telephone, CATV)	\$2,000
Telecommunication Fiber Optic Cable (0 - 432 strands)	\$4,500
Telecommunication Fiber Optic Cable (>432 strands)	\$10.42/strand per cable

Source: North County Transit District Board Approved Cost Recovery Fee Schedule

The Standard FEES Act before this Subcommittee heads in the right direction here by requiring consistency across all federal agencies so that applicants planning network build that must cross public land can account for their costs with confidence. It is important that the annual costs applied to a new network don't scale up on arbitrary metrics. Otherwise, long term financial models of new entrants will be rendered unviable. If we want to ensure the lowest possible price point for residents and businesses, keeping every additional cost applied to the network attached to actual costs is key.

Free Up the Public Sector

Congresswoman Eshoo's legislation, the Community Broadband Act, is probably one of the most important bills here before the Subcommittee. To get 21st century ready access to every single American, we must have an all-hands-on-deck approach. The private sector has limitations in how much risk they can tolerate and how long they can wait on a return on investment. Typically, the industry prioritizes areas that will yield a return on their investment at around 3 to

5 years, potentially even up to 10 years. That runs contrary to many of the goals laid out in BEAD, where Congress is seeking to connect the most difficult and expensive areas in our country. This is where the public sector's involvement is most needed.

Certain parts of this country will require an entity who is willing to accept zero profit and operate "at cost" in order to keep the price of broadband low. They may require an entity to accept a nearly 40-year low-interest debt instrument to long term finance the construction of the fiber with the goal of meeting the debt obligation and not much more. These factors are ill-suited for private sector participants who will not only want to avoid such areas, but also are unlikely to invest the requisite local resources needed to maintain the network in terms of staffing personnel and other operations and maintenance costs. In these instances, only the local community itself can meet the challenge.

California, which removed its own restraints on local government networks in 2018, went through this experience in recent years. The 2020 bankruptcy of Frontier Communications sent a wakeup call throughout its rural communities. The county governments concluded that if the only major private provider (which was still only providing obsolete copper-based DSL) has gone bankrupt, then they were on their own to build the future. And so, without any state restraints on their ability to map out their own destiny, they began to plan. Leveraging the passage of the state's infrastructure law, S.B. 156, the rural county governments formed a Joint Powers Authority known as the Golden State Connect Authority. ²⁷ The plan they created, modeled after successful efforts in the state of Utah by its own municipalities, was to deliver open-access fiber to all rural residents. In their own financial models, they determined that if the state could provision them with long-term low-interest financing, they could reach more people with infrastructure than any private option ever could deliver, and they could enable small local private ISPs to flourish. They are beginning to build today even before the passage of the IIJA and I believe every community in every state must be given the full range of options or they will fall short.

²⁷ See more about the Golden State Connect Authority here: https://goldenstateconnect.org/

Additional Ideas for Improving Deployment

One of the big bottlenecks that Congress can address is modernizing pole attachment rights to apply to the next generation of deployers. The pole infrastructure is a natural monopoly and requires regulation in order to address gatekeeper power, particularly if the pole owner is a competitor. This is exactly what happened when Google Fiber ran into roadblocks in Austin, Texas; AT&T refused to allow Google to connect to its poles solely on the premise that Google had no clear attachment rights. Current law gives privileges to telecommunication carriers and cable television providers, but not to standalone broadband providers. This promotes inefficiencies because one would have to structure their network to become something other than a standalone broadband provider (increasing their costs) merely to obtain key regulatory benefits. Ensuring that all broadband providers and infrastructure entities that enable broadband such as open-access carriers receive the same rights to attach to poles would go a long way to promoting BEAD applicants' ability to deploy.

But even if you grant the right, some balls and strikes need to be called about cost-sharing for accessing poles. Right now, the FCC is reviewing the appropriate rules for who foots how much of the bill when a new entrant wants to attach to a pole. There is real fundamental disagreement in the ecosystem between pole owners and broadband providers, and each dispute at each pole is a delay that undermines BEAD's success. EFF generally disagrees with the premise that new entrants must foot the entire cost of a shared resource given that all parties benefit from new poles, but the FCC must make decisions here to provide clarity and reduce delay. To the extent the Subcommittee is focused on the utilization of shot clocks on permits, imploring the FCC to conclude its proceeding on cost sharing rules in order to provide more predictable cost outcomes when attaching to poles, is also important.

Another discrete area that if improved would result in positive outcomes for broadband competition is building codes. Right now, older apartment buildings are unprepared to allow new entrants to enter and wire their premises. This is mostly because adding broadband access is generally outsourced to incumbent carriers, who merely wire the building for their own needs and have incentives to exclude competitors. Codifying legal rights for new ISPs to enter

apartment buildings along with incentivizing building owners to modernize their infrastructure to facilitate their entry, or for cities to update their building codes to require their buildings to have basic accessible conduit, would significantly reduce the cost to deploy in cities.

Lastly, small providers are at a disadvantage when navigating the bureaucracy of permits when running into federal lands. They would benefit significantly if it was clear there was some "lead" agency with responsibility for the timely resolution of a permit. Along with the need to provide additional resources to federal agencies to improve staffing to review and process permits, some centralized point of contact for communities would be beneficial. This is similar to what Kansas City did to attract Google Fiber back when cities were competing to be awarded a project. Rather than having the provider navigate several local agencies individually to process its permits for construction, the city provided a single point of contact who served as the interface with the other agencies.

What Should Change After BEAD is Done?

Looking forward, if BEAD is successful in delivering fiber infrastructure to many unserved communities, it will probably be time to abandon speed metrics as a means of testing whether an area is "served" or "unserved." The reality is that on an all-fiber network, the cost differences between offering a gigabit connection, a ten-gigabit connection, and a hundred-gigabit connection, will continue to shrink rapidly. This is because the future of broadband as envisioned by the NTIA will be ever increasing speeds at lowering costs.

Therefore, it is time we plan the move away from using speed metrics as a means to determine if an area is receiving sufficient connectivity and broadly adopt the "priority broadband project" provisions to determine who is "served" and "unserved." I would argue today using 25/3 mbps is generally a waste of everyones' time as average user needs are 400% that number today. And unless the FCC regularly updates what is "broadband" with an annual increase of 21 percent to reflect the real-world consistent growth curve, the number obfuscates what's happening on the ground. No one benefits if we set our metrics so low that any obsolete form of broadband infrastructure qualifies.

Are the connections in a community able to scale in a cost-efficient basis and can it support 5G and successor technologies? Will it be able to deliver faster speeds at lower prices in order to reduce the cost of subsidizing low-income user access? These are the questions we should pivot towards next after the rollout of BEAD based fiber infrastructure. Otherwise, we will miss the creation of a new digital divide premised on who has future-proof infrastructure and who is stuck in the past.

Mr. LATTA. And thank you very much for your testimony. Mr. Finkel, you are recognized for 5 minutes.

STATEMENT OF LOUIS FINKEL

Mr. FINKEL. Well, thank you, Mr. Chairman. Mr. Chairman, Ranking Member Matsui, members of the subcommittee, thank you for inviting me to testify today.

My name is Louis Finkel, and I serve as the senior vice president for government relations at the National Rural Electric Cooperative

Association, or NRECA.

NRECA is the national service organization for more than 900 rural electric cooperatives that provide electric service to approximately 42 million people across 48 States. Rural electric cooperatives are member owned, not for profit, and we were formed to provide safe, reliable electric service to their members at a most—at the most reasonable cost.

Electric cooperatives are focused on people, not profits. A long-standing commitment to rural communities drives co-ops to identify ways to help build a better tomorrow. This obligation is not without challenges. More than 80 years ago, electric cooperatives were formed to bring affordable electricity to high-cost, low-density rural areas where large, investor-owned utilities would not. Those same economic factors exist today for broadband delivery to those same areas.

The cost of building and maintaining these networks in sparsely populated areas with difficult terrain is prohibitive for member—many providers. It is a cost-intensive process with little return on investment.

Today, more than 200 electric cooperatives in 39 States are involved in rural broadband deployment efforts, whether as the internet provider themselves or through partnerships. Since cooperatives are owned by the people they serve, they truly understand the need for broadband in these areas and the challenges associated with deploying this infrastructure, which is why some coops have chosen to expand their services to include broadband. Simply put, co-ops are providing this service because no other provider will.

The existing Federal permitting process takes too long, it's too expensive, and is an impediment to the ability of broadband providers to meet the needs of their consumers and communities. This process must be modernized to give more certainty and predict-

ability to providers.

The National Environmental Policy Act, or NEPA, regulations present a significant challenge to rapid broadband deployment. Coops face NEPA requirements when seeking a variety of Federal permits, approvals, and financial assistance, including access to powerlines right-of-way on Federal lands. In many instances, existing rights-of-way and easements only apply to electric service and not to broadband. When this happens, the utility must renegotiate the right-of-way or easement agreement with each State, each Federal agency, local jurisdictions, and private landowners, which can take years and cost millions of dollars.

Improving coordination amongst Federal agencies is a simple, commonsense step that can alleviate many challenges to rural broadband deployment and reduce both delays and costs for these projects. Even within the same agency, co-ops have experienced differing application of the rules when dealing with multiple regional or State offices. Similarly, duplicative reviews by Federal agencies for broadband infrastructure placed on existing poles in existing right-of-ways only serve to slow down projects and make them more expensive.

Streamlined approaches to actions that are known to have minimal environmental impacts will allow agencies to focus their time and resources on proposals that truly do have significant environmental impact. Similarly, ensuring that broadband maps are accurate before BEAD funds is distributed is critical to connecting unserved communities. Congress should provide flexibility to States to use their own maps and local knowledge in addition to the FCC

maps when determining eligible locations for BEAD.

As electric utilities, co-ops own and maintain utility poles and rights-of-way for the safe and reliable distribution of electricity. When space and capacity allow, co-ops lease out excess space to their poles to communications providers. This relationship provides communications companies with access to an existing pole distribution network for a small fraction of the cost that the co-op community has incurred to build and maintain these systems.

The fees charged to attach to co-op poles reflect the unique geographic and demographic characteristics of each co-op service territory, which can vary from State to State and co-op to co-op. If the Fair Poles Act were enacted, it would dissuade electric cooperatives from participating in recently created Federal programs and sup-

porting broadband deployment in high-cost rural areas.

Cooperatives are some of the most willing entities to bring broadband to those hardest-to-reach and most expensive communities, and adoption of the Fair Poles Act would unfairly change the rules of the game after providers have already gone through the complicated and costly process of applying for Federal funding. The Federal permitting process becomes even more challenging when multiple Federal agencies are involved, and lengthy reviews coupled with unclear timelines and administrative burdens only add to the challenges and frustration of dealing with the Federal Government.

NRECA and its members are deeply committed to bridging the digital divide and connecting rural families and businesses with reliable, high-speed internet. We appreciate the committee's timely attention to permitting issues and streamlining deployment so that families, no matter where they live, can access reliable, affordable internet connection that meets their needs today and into the future.

I thank you for the opportunity and look forward to your questions.

[The prepared statement of Mr. Finkel follows:]

Testimony of Louis Finkel Senior Vice President, Government Relations, National Rural Electric Cooperative Association United States House of Representatives, Committee on Energy and Commerce

Legislative Hearing on Unleashing U.S. Communications Innovation

April 19, 2023 10:30 am 2322 Rayburn House Office Building

Chairman Latta, Ranking Member Matsui, and Members of the Subcommittee. Thank you for inviting me to testify today. My name is Louis Finkel and I serve as the Senior Vice President for Government Relations at the National Rural Electric Cooperative Association. NRECA is the national service organization for more than 900 rural electric cooperatives that provide electric service to approximately 42 million people across 48 states. Rural electric cooperatives are member-owned, not-for-profit, and formed to provide safe, reliable electric service to their member-consumers at the lowest reasonable cost. They have a longstanding commitment to improving the communities in which they serve, and many are actively engaged in rural economic development efforts.

Today, more than 200 electric cooperatives are involved in rural broadband deployment efforts, recognizing the impact that a reliable high speed internet connection can have on their communities and the challenges of deploying this infrastructure in low density, rural, and remote areas. For many cooperatives, the story of rural broadband deployment today mirrors the story of rural electrification nearly 100 years ago. The cost of building and maintaining networks in sparsely populated areas with difficult terrain is prohibitive for many providers. It's a cost intensive process with little return on investment. Since cooperatives are owned by the people they serve, they truly understand the need for broadband in these areas and the challenges associated with deploying this infrastructure, which is why some have chosen to expand their services to include broadband.

Permitting Reform is Needed

Permitting reform is a timely and welcome discussion, and an issue that greatly impacts the rapid deployment of broadband infrastructure in rural areas. The existing federal permitting process takes too long, is too expensive, and is an impediment to the ability of broadband providers to meet the needs of their consumers and communities. The federal environmental review and permitting process must be modernized to give more certainty and predictability as electric cooperatives and other internet service providers build networks to connect homes, families, and communities across the country. On behalf of NRECA and America's Electric Cooperatives, I want to thank you all for your thoughtful consideration of these issues and your efforts to streamline rural broadband infrastructure deployment across the United States

The National Environmental Policy Act (NEPA) regulations present a significant challenge to rapid infrastructure deployment, often delaying projects and driving up costs. Co-ops face NEPA requirements when seeking a variety of federal permits, approvals, and financial assistance, such as access to power line rights of way on federal lands. In some instances, NEPA has been applied differently by federal agencies.

For example, when a cooperative in Colorado won a USDA ReConnect award to provide broadband service, they planned to use existing electric infrastructure for the project and did not anticipate any permitting problems. However, the project sought to cross land managed by the U.S. Interior's Bureau of Land Management (BLM), which required full oversight and review of the proposed USDA funded infrastructure project simply because the project involved broadband service rather than electric service. The project in question was utilizing the same right-of-way and the poles that provide electric service to the same communities. As a result, the co-op was required to undergo an expensive, time consuming, and onerous permitting process through BLM that added months of delay and an unanticipated, and unbudgeted, \$800,000 to the project. For electric service improvements, the existing rights of way are sufficient, and the co-op can upgrade their facilities without the added time and expense. But because this co-op was attaching broadband infrastructure to their existing poles in the existing right of way, BLM treated the project as a greenfield build which triggered a full environmental review.

In many instances, existing rights of way and easements only apply to electric service and not to broadband, which impacts not only cooperatives deploying broadband but any electric utility seeking to lease out excess fiber capacity to third-party telecommunications providers. Many cooperatives are including fiber to support electric operations or implement smart grid technologies. Fiber installed to support electric operations is typically allowed in electric utility rights of way, but if a co-op leases excess fiber to a third party for retail broadband, or chooses to provide retail broadband themselves, it could trigger a violation. Often, the utility must renegotiate the right of way or easement agreement with each state or federal agency, local jurisdiction, or private landowner, which can take years and can cost millions of dollars.

Similarly, the various federal agencies' rights of way permitting process often treats broadband deployment projects like a commercial service, and those projects are not given the same expedited treatment afforded utility services. Cooperatives on more than one occasion have been told by environmental specialists at the U.S. Forestry Service that it can take up to 270 days to review a broadband deployment permit application when using existing poles in existing rights of way, despite having existing permits for electric service on the same poles in the same rights of way. Working with the Army Corps of Engineers also presents challenges, as crossing Army Corps managed lands or accessing easements is a cumbersome and lengthy process with no easy solution. Cooperatives have run into issues with the Corps' non-recreational outgrant policy, which requires the project to either have no viable alternative or provide a direct benefit to the government to begin receiving consideration. In many instances, projects have been forced to build around Army Corps managed land, which adds significant costs and delays to project completion, because obtaining the easement from the agency is too difficult or expensive.

Improving coordination amongst federal agencies when it comes to permitting is a simple and commonsense step that can alleviate many challenges to rural broadband deployment and reduce both delays and costs to these projects. Many rural communities are located near federal lands controlled by agencies such as the Department of the Interior, U.S. Forest Service, or Army Corps of Engineers. While all major federal property managing agencies can use the SF-299 as the common application form to authorize permits for communications facilities, these federal agencies have different missions, rules, and regulations governing private use of their public lands. Even within the agencies themselves, co-ops have experienced differing application of the rules when dealing with one regional or state office over another. Similarly, duplicative reviews by federal agencies for broadband infrastructure placed on

existing poles in existing rights of way only serve to drive up costs and slow down delivery timelines. In some instances, these barriers serve to dissuade providers from extending service to rural areas.

Streamlined approaches to actions that are known to have minimal environmental impacts, such as aerial broadband deployment on existing electric infrastructure, will not only reduce the paperwork required, but it will allow agencies to focus their time and resources on proposals that truly do have a significant environmental impact.

It should be noted that numerous issues with rights of way and easements also exist at the state level. Many state laws and existing agreements would not allow electric easements and rights of way to be used for broadband without renegotiating with each property owner. To date, about 18 states have adopted such laws to make easements and rights of way more compatible with broadband expansion, but issues remain in states that have not adopted these laws.

Finally, ensuring that the national broadband maps are accurate and truly reflective of realities on the ground is vitally important to rapid deployment of this critical infrastructure across the country. The new Broadband DATA Maps at the FCC are a significant improvement from the previous census-block level maps, but its clear that numerous errors and inaccuracies still exist. We understand that the maps are iterative, but the short timeline between the release of the pre-production draft maps and the forthcoming announcement of state BEAD allocations by NTIA leaves little time for challenges to be resolved. Congress should provide flexibility for states to use their own maps and local knowledge in addition to the FCC's national broadband maps in determining eligible locations for BEAD funding. Without that flexibility, rural families and communities could miss their opportunity to receive a broadband connection through this historic funding.

Policy Proposals Before the Committee

We appreciate the Committee's desire to continue building on recent discussions around permitting reform, and some of the proposals discussed today are a step in the right direction toward alleviating many of the barriers cooperatives and other providers face when working with federal agencies. The Reducing Barriers for Broadband on Federal Lands Act would create exemptions from NEPA and National Historic Preservation Act (NHPA) requirements for broadband projects on federal lands. This would be helpful in expediting many broadband deployment projects across federal lands, especially in situations where existing poles and rights of way are being leveraged.

Similarly, the Facilitating DIGITAL Applications Act would improve the transparency of the federal permitting process by establishing a portal for federal agencies to accept and process Form SF 299 common applications forms would be a benefit.

The Connecting Communities Post Disaster Act would streamline the ability of a provider to replace or improve a communications facility after a major disaster. We appreciate the spirit of the Wildfire Wireless Resiliency Act, which allows similar rebuilding and hardening of this infrastructure after a wildfire, and look forward to working with Members of this Committee to ensure that all broadband infrastructure can be included under this provision.

¹ Easement Clarity Would Help Texas Co-ops Deliver Broadband, by Cathy Cash, April 2019, available at https://www.electric.coop/easement-clarity-would-help-texas-co-ops-deliver-broadband.

Cooperative Pole Attachment Rates Are Not a Barrier to Rural Broadband Deployment

As electric utilities, cooperatives own and maintain utility poles and rights of way for the safe and reliable distribution of electricity to their members. Ensuring the safe, affordable and reliable delivery of electricity is the first priority for every electric cooperative. When space and capacity allow, co-ops lease out excess space on their poles for the delivery of telecommunications services by third party providers, or even their own broadband subsidiary. This relationship provides communications companies with access to an existing pole distribution network for a small fraction of the significant costs that co-ops have incurred to build and maintain these systems. The fees charged to attach to co-op poles reflect the unique geographic and demographic characteristics of each co-op's service territories, which can vary from state to state and co-op to co-op.

Co-ops charge cost-based rates depending on several factors, including population density and geographic terrains within their service territories. Cooperatives must also consider certain factors as they review requests for pole attachments to ensure the safety, reliability, and resiliency of the electric grid. Federal and state regulations, including the National Electrical Code and the National Electrical Safety Code encompass everything from minimum line clearances to acceptable pole wind, ice, and weight loads, and can even dictate where attachments can be placed on a pole. In some instances, a taller or stronger pole is needed to accommodate new requests for attachments.

The same economic factors that dissuaded for-profit electric companies from extending service to rural areas in the 1930s exist today to dissuade for-profit communications companies from providing broadband in these same areas. The cost of building and maintaining these networks in sparsely populated areas with difficult terrain is prohibitive for many providers. It is a cost-intensive process with little return on investment. In fact, several federal and state entities have determined that the most challenging barrier to rural broadband deployment is low population density.

In a 2019 report ², the Congressional Research Service (CRS) stated that the overriding factor for broadband expansion is customer density, adding that rural terrain and remoteness contribute to the problem. Similarly, a 2019 Issue Brief released by the U.S. Small Business Administration found "the current gap between rural and urban areas in internet access parallels earlier gaps in electrical and telephone access. Each technology relied on an infrastructure that made access more costly in areas with lower population density." ³ It is important to note that neither of these reports cite pole attachment costs as a barrier to deployment.

Electric cooperatives work in good faith to negotiate reasonable rates for pole attachments so that the burden of financing rural broadband deployment does not unfairly fall on rural electric customers. On average, electric co-ops serve 7 customers per mile, compared to approximately 34 customers per mile served by larger investor-owned utilities. Rural, high-cost areas require more pole and wires to serve a small customer base from which they can recoup the higher deployment costs.

² https://crsreports.congress.gov/product/pdf/RL/RL30719/101

³ Issue Brief: Accessing the Internet in Rural America, Daniel Wilmoth, Research Economist, Office of Advocacy, U.S. Small Business Administration, November 15, 2019, p. 11, available at: https://cdn.advocacy.sba.gov/wpcontent/uploads/2019/11/07105617/Rural-InternetAccesss.pdf.

Many cooperatives have started deploying broadband in their service territories in large part because no one else will do it. Much like the 1930s, when electric cooperatives were the providers of last resort for many unserved rural communities, the same holds true today related to broadband connectivity. Since cooperatives are owned by the people they serve, they truly understand the need for broadband in these areas and the challenges associated with deploying this infrastructure. The one-size-fits-all approach that some in the industry would like to see implemented, and that the so-called "FAIR Poles Act" would implement for co-ops who participate in certain recent federal broadband programs, does not accurately reflect the unique cost of building and maintaining a pole distribution network in low density, hard-to-reach rural areas that can differ from state to state and co-op to co-op.

There's Nothing Fair About the FAIR Poles Act

If the FAIR Poles Act were enacted, it would dissuade electric cooperatives from participating in recently created federal programs aimed at supporting broadband infrastructure deployment in high-cost rural areas. Cooperatives are some of the most willing entities to bring broadband to those hardest to reach and most expensive communities. Rather than foster competition and spur development in unserved rural areas, it is unlikely that requiring the use of the FCC rate for pole attachments would be enough to incentivize others to build in these high-cost, low density areas. And, with existing prohibitions on overbuilding already in place, other entities would be unable to access any additional federal support for areas in which a co-op accepts federal funding, meaning the other entity would have to finance the high cost of deployment themselves.

Furthermore, many of the broadband programs that would be impacted by the FAIR Poles Act have already closed their application windows and begun to disburse funding. The Rural Digital Opportunity Fund auction was conducted in December 2020, the FCC has approved many of the long-form applications, and providers have begun to receive funding. The American Rescue Plan Act was passed in March 2021, with flexibilities for some of the funds to be used for rural broadband deployment. Many cooperatives have partnered with their states or local communities to use assistance from Treasury's State and Local Fiscal Recovery Funds or Capital Projects Funds.

Many programs created by the Infrastructure Investment and Jobs Act have also begun or are about to begin disbursing funds. For example, NTIA's Enabling Middle Mile Broadband Infrastructure Program, which would provide \$1 billion in grant funding to expand and extend middle mile infrastructure in rural areas, had an application deadline of September 30, 2022. The agency intends to start making funding announcements in the coming weeks, and numerous co-ops or partnerships involving co-ops submitted funding applications. Similarly, USDA accepted applications for Round 4 of its ReConnect Program, which received close to \$2 billion in funding through IIJA, from September 6 to November 2, 2022. USDA began making Round 4 awards earlier this month.

For many cooperatives seeking to build out broadband infrastructure in their service territories, adoption of the FAIR Poles Act would unfairly change the rules of the game after providers have already gone through the complicated and costly process of applying for federal funding.

Conclusion

The complicated federal permitting process becomes even more challenging when multiple federal agencies are involved, and lengthy reviews coupled with unclear timelines and administrative burdens only add to the challenges and frustrations of dealing with the federal government.

Rural electric cooperatives are deeply committed to bridging the digital divide and connecting rural homes and businesses with reliable broadband service. I appreciate the opportunity to share the cooperative perspective on broadband permitting reform, and your attention to this important and timely issue. NRECA and the nation's electric cooperatives look forward to working with this Committee and others in Congress to address these issues and close the digital divide once and for all.

Mr. LATTA. Thank you for your testimony.

And the Chair now recognizes Mr. O'Rielly. Thanks very much for being with us. Good to see you back at the subcommittee. And you're recognized for 5 minutes.

STATEMENT OF MICHAEL O'RIELLY

Mr. O'RIELLY. Thank you. Good morning, everyone. Thank you to Subcommittee Chairman Latta, Ranking Member Matsui, Full Committee Chair Rodgers and Ranking Member Pallone, and the members of the subcommittee for calling this important hearing for the—and including me as a panelist.

the—and including me as a panelist.

I am Michael O'Rielly, currently president of a self-named small consulting firm. Previously, I served as an FCC Commissioner and a 20-year congressional staffer, including 8 years on this sub-

committee.

I want to start by extending my support for the large majority of bills and the underlying issues that are the subject of today's hearing. I appreciate and applaud the subcommittee's attention to ease the broadband permitting process and address the necessary component of pole attachments. In several instances, respectfully, I do believe the legislative efforts could go further, especially on pole attachments.

For multiple decades, policymakers rightfully have declared it U.S. policy that all Americans should have access to broadband. Despite changing definitions of speed and capacity requirements over time, the charge has remained constant: Bring private-sector broadband offerings to every unserved household in our Nation.

While several of today's bills may be being brought forward by Republicans, I note that relevant Biden administration officials have wholeheartedly agreed with permitting reform and have outlined additional action that they intend to take on that purpose. Inefficient and costly permitting and pole fee requirements extend broadband buildout timelines, raise overall costs, reduce willingness to participate in Federal and State programs, alter bids being submitted, and waste broadband company resources.

If the ultimate goal is to give broadband access to those unserved Americans, this effort, if sufficiently broad and comprehensive, can remove a known and legitimate set of obstacles to deployment. Likewise, the U.S. cannot be a global leader in wireless connectivity without necessary upgrades to existing wireless infrastructure. Yet, creating modern wireless networks and meeting consumer wireless needs can reduce overall approval from—requires overall approval from a multitude of government entities.

In particular, the siting of towers and antennas, be they large or small, has generated unnecessary opposition from certain groups for various reasons, and operators have run into processes that are outdated based on out—based outside of reason or fact and are downright discriminatory. Application costs have also been a major issue.

For wireline-centric networks, new fiber routs as well as fiber connecting wireless communication towers and antennas will be buried underground or attached to existing pole infrastructure. Hundreds of thousands of miles of fiber that all need to be approved whether it uses States or local lands, easements, rights-of-

way, and the source—or needs overall governmental approval to dig and lay the fiber within a State.

Thus, improvements to these procedures, such as those contained in the draft Broadband Leadership Act and other draft bills would be exceptionally helpful to the effort. Respectfully, these are not new issues, as we've mentioned before. They've been explored at

length and are well known.

I participated in hundreds and hundreds of meetings on this particular topic. I've been in the fields and have run the diggers, the cherry pickers, and the trenchers. I've had thousands of conversations with people who are trying to get broadband out into the communities they serve. I've sat with families who have had—who have not had broadband and are seeking it. And these problems exist and have existed pretty much in some form or fashion for the last 30 years of my career. We're finally getting to a point where we're trying to patch up a number of issues that are well known.

On the wireless side, streamlining Federal siting provisions and codifying recent efforts of the Commission, such as timelines, deemed granted procedures, application fee amounts, minimizing upgrade approval needed, and addressing historic preservation and NEPA restrictions would go a long way toward securing a wireless

future and short circuiting endless litigation.

Additionally, a number of bills under consideration would address the wireless siting procedures on Federal land. One of the bills being discussed today would effectively apply Section 224 of the Communications Act, thus sidestepping the current exemption for multiple—municipal systems, cooperatives, and nonutilities for entities that are or becoming recipients of certain Federal broadband subsidy programs.

While I worry the scope of this bill may be too narrow, I'm outraged by a joint letter that I saw yesterday by many electric utility and co-op organizations opposing even this moderate step. To put in context, these organizations represent entities that have sought to enter the broadband marketplace and have full access to the provisions of 224 for areas outside their natural footprints but reject any type of reciprocity. These are the same entities that stood at my door at the FCC and begged to be put first in line on broadband subsidies, leaving others to pick for the leftover areas and funds.

Not only should this applicable bill be passed into law, but the current exemption should be completely eliminated. If that's too far, at least exclude the exemption area—exclude the exemption for areas deemed unserved or underserved.

I thank the Chair for his time.

[The prepared statement of Mr. O'Rielly follows:]



Statement of Michael O'Rielly President, MPORielly Consulting Inc. Before the House Energy and Commerce Committee Subcommittee on Communications and Technology Hearing Entitled, "Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment" April 19, 2023

Good morning. Thank you, Subcommittee Chairman Latta, Ranking Member Matsui, and

Members of the Subcommittee for calling this important hearing and for including me as a panelist.

By way of background, from 2013 to 2020, I was one of five commissioners (sometimes three) at the Federal Communications Commission and was actively involved in nearly every issue before the agency, including differing means to extend and expand broadband networks to all interested Americans. Previously, I proudly served as a staff member in both the Senate and the House. It is a pleasure to return to this institution where I started my professional career as a staff member on the committee. I am currently President of MPORielly Consulting Inc., a small consulting firm that works with a select list of telecom and technology firms. Although some of my clients may have an interest in this hearing, I alone prepared my testimony to reflect my views and experience on the topic.

From the outset, let me strongly extend my support to the package of bills (minus one or two) and the underlying issues that are the subject of today's hearing. While I won't comment on each bill, I appreciate and applaud the Subcommittee's attention to ease the broadband permitting process and address the necessary component of pole attachments. In several instances, I do believe that the legislative effort, particularly as it relates to pole attachments, should go much further. I look forward to an assembleance of these bills working through the legislative process in the near future and stand ready to assist the Subcommittee in any way I can.

A Critical Imperative to Act

For multiple decades, policymakers rightfully have declared it U.S. policy that all Americans should have access to broadband service. The Covid pandemic reaffirmed and strengthened the benefits broadband service brings to our society and individual families. It's one reason that approximately \$100 billion in direct Federal funds will be invested in broadband networks over the next few years. Despite changing definitions of speed and capacity requirements over time, the charge has remained constant: bring private sector broadband offerings to every unserved household in our nation. And this view has been widely supported by both political parties in multiple presidential administrations and in House and Senate leadership even amid changing majorities.

Just in the last few weeks, I participated in two events in which I was heartened to hear Biden Administration officials wholeheartedly endorse permitting reform and outline additional action they intended to take for that purpose. First, NTIA Administrator Alan Davidson recently spoke publicly about the necessity of permitting reform, and its compatriot pole attachments, to effectuate his agency's broadband funding grants, the Broadband Equity, Access, and Deployment (BEAD) grant program. Additionally, he remarked that the agency was reviewing ways to condition its grants on commitments to improve state and local permitting by recipients. While I may not favor using such a conditional approach, which could possibly to be outside the statute, the urgency and importance of rectifying this issue was appreciated. Second, just last week U.S. Commerce Deputy Secretary Don Graves expressed his view at USTelecom's American Connectivity Forum that permitting reform was at the top of the list in terms of activities the Department was reviewing, in coordination with NTIA, to facilitate broadband expansion.

From my vantage point, Members of the Subcommittee should consider three activities to improve broadband availability and bring service to those American households without. While significant funding has already been appropriated through various federal programs, the Subcommittee

should be extremely diligent in conducting oversight over how these funds are being spent or eventually will be spent. Making so much funding available at once increases the likelihood of overall waste, fraud, and abuse, and the pernicious effects of subsidized overbuilding should be of deep concern. Similarly, as broadband access expands through these programs, there remains a need to address overall affordability. I have made the case that championing added funding for the Affordable Connectivity Program (ACP), which is likely to exhaust resources mid-next year, should be a priority by Subcommittee Members, even among those more fiscally conservative. ¹

The most immediate need for the Subcommittee's attention is to improve the process by which broadband companies must go through to actually build and deploy broadband networks. Weaving through the layers of approval and required payments, as necessary, has a direct impact on private broadband providers' timing, architecture, costs, and more for network builds – be they wireline or wireless systems. By the same token, inefficient and costly permitting and pole fee requirements extend build timelines, raise overall costs, reduce willingness to participate in state and federal programs, alter bids submitted, and waste broadband company resources.

Sadly, these are not new issues. For decades, permitting and pole attachments procedures and rates have stymied progress in the communications arena. At Congress' direction and reflecting the need to promote deployment, the FCC has acted in numerous proceedings to alleviate the barriers — occasionally pushing its statutory boundaries to the edge, which often resulted in tortuous litigation over the agency's jurisdiction. But with the proposed bills before the Subcommittee, Congress can affirm the Commission's authority in certain instances and grant other agencies or the courts authority to remove these barriers. If the ultimate goal is to get broadband access to those unserved Americans,

¹See "A Conservative Case for the Affordable Connectivity Program," The Hill, February 2, 2023 Affordable Connectivity Program needs permanent funding | The Hill

this effort – if sufficiently broad and comprehensive -- can remove a known and legitimate set of obstacles to deployment.

Permitting

The current fixation with fiber broadband as the preferred broadband network component by certain federal officials under federal funding programs will have an impact on state and local permitting. Specifically, a portion of these new fiber routes, as well as fiber connecting wireless communications towers and antennas, will be buried underground. This is likely to be hundreds of thousands of miles of fiber that all will need to be approved whenever it uses state or local lands, easements, rights of way and the sorts or needs overall governmental approval to dig and lay fiber within an area. This has the potential to be a major bottleneck in broadband deployment to reach the last five to seven percent of locations nationwide.² Thus, improvements to these processes, such as those contained in the draft "BROADBAND Leadership Act" and other draft bills, would be helpful and could be expanded further.

I also wish to raise a related issue to wireline permitting. The process that private railroads use to permit crossings by broadband companies is borderline predatory. The State of Virginia has led legislation to curtail the exceptionally long timelines, estimated at multiple months, and outrageous fees sought by the select railroads. Dating myself, I remember when this Committee had jurisdiction over railroad matters, and I suggest that the Subcommittee should consider expanding the state reforms to cover all states.

Likewise, the U.S. cannot be a global leader in wireless connectivity without necessary upgrades to the existing wireless infrastructure. Using higher frequency spectrum bands, for instance, requires denser network architecture and the installation of additional antennas and towers. This will be

 $^{^{\}rm 2}\,{\rm This}$ is a rough estimate that is likely elevated above the actual unserved population.

especially true for 6G wireless offerings, likely to operate in both midbands and high bands. Moreover, the role of wireless broadband offerings to meet unserved and underserved households will increase – despite the Administration's rejection of the BEAD program's statutory technology neutrality mandate. To build and sustain these networks as demands increases means the construction and installation of thousands of new towers and antennas.

Yet, creating modern wireless networks and meeting consumer wireless needs can require approval from a multitude of government entities. Over the years, these procedures have proven extremely difficult and time-consuming for the private sector to navigate in many instances. In particular, the siting of towers and antennas, be they large or small cell, has generated unnecessary opposition from certain groups for various reasons, and operators have run into processes that are outdated, based outside of reason or fact, and/or downright discriminatory. Application costs have also been a major issue.

Accordingly, the Subcommittee's assistance in this area would be invaluable. Streamlining Federal siting provisions and codifying recent efforts of the Commission, such as timelimes/deemed approved procedures, application fee amounts, minimizing upgrade approvals needed, and addressing environmental and historic preservation, would go a long way towards securing a wireless future and short-circuiting endless litigation. Additionally, a number of bills under consideration would address the wireless siting procedures on Federal lands. Given the benefits that wireless networks bring for public safety and convenience, I personally have little sympathy for aesthetic concerns raised over towers or antennas.

Pole Attachments

Although new broadband maps are still in the process of being completed, we do know from past mapping efforts that many of the locations without broadband service are located in more rural,

less dense areas. Given the economics of these areas, it is highly unlikely that a new broadband entrant can afford to obtain the necessary land rights, procure the supplies, and install new poles to deploy its network. Simply put, an additional pole network is not in the cards. That means, broadband entrants will continue to seek use of the existing pole infrastructure. But the underlying process to obtain access to these poles strains credibility and the rates being charged far exceed established norms. In some instances, depending on which owns the poles, there may be competitive reasons at work to prevent new entrants from establishing service. Except in certain circumstances, it is also unreasonable for reasons of cost, time delays, terrain, etc. to assume that broadband providers simply can bury all physical lines. Overall, this situation is untenable.

The current pole attachment structure is generally governed by Section 224 of the Communications Act. That provision, which has worked somewhat well through the years, was the result of political compromises, given the various forces at differing times. While the FCC has adopted implementing rules and subsequent enhancements, such as adjusting the rate formulas and simplifying the process for attachers, a main impediment is an exemption in current law for municipal systems, cooperatives, and non-utilities. The scope of the exemption nationwide is exceptionally large, covering almost one hundred million poles. This problem becomes magnified when the realization occurs that a great deal of BEAD funding will likely go to states located in the Southern portion of America and receive power service from utilities distributing power generated by the Tennessee Vally Authority (TVA).

To the extent that this exemption ever made substantive sense, I join many parties in asserting that it no longer does. Defenders of the exemption argue that the applicable entities need to maximize fees given the economics of their systems and there are unique concerns, such as safety and reliability, for these systems' poles. These arguments, however, fall apart under the most rudimentary review. There is nothing special about these poles as opposed to non-exempt ones, such as neighboring ones owned and operated by non-exempt entities. Moreover, the FCC is fully capable to exploring, and

addressing, if necessary, any special health and safety issues arising over these discrete poles. In terms of extraordinary fees, the Commission during my time moved away from a rural/urban distinction for poles rates. I posit that using high pole attachment rates as a cross-subsidization mechanism for the exempted party is no longer appropriate. To the extent necessary, the Commission could explore and consider such a circumstance, if the exemption were removed.

One of the bills being discussed today would effectively apply Section 224's regime to exempt entities that are or become recipients of certain federal broadband subsidy programs. This would be an improvement and certainly seems justifiable given that these entities would be entering the broadband marketplace using Federal funds. At the same time, this bill's applicability may be too narrow to deal with the current pole exemption problem. Consider that it is highly likely that some non-exempt entities will win federal funds for areas covered by pole owners currently exempt. In these instances, the bill wouldn't provide any assistance for the respective area, leaving the winning broadband provider at the mercy of the current ineffective system. Moreover, exempt entities may have partnerships that could escape the bill's reach.

Fundamentally, the exemption should be deleted. At a minimum, the bill's scope should be expanded to apply in all unserved and underserved areas. Otherwise, there may be opportunities for gamesmanship and unfair maneuvering by exempt entities that prevent broadband service from reaching needy households.

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As is its history, this Subcommittee has put a great spotlight on a needed area for attention in the communications space to enable broadband service expansion to reach all Americans. Without necessary attention, Federal broadband funding and the related projects will get unnecessary delayed or bogged down. Worse yet, the funding will ultimately cover fewer households than expected, leaving

households outside of the digital revolution. Legislating on this subject to address abuses or incompetence of the permitting and pole attachment fee mechanisms is necessary and prudent.

Mr. LATTA. Well, thank you very much for your testimony.

And before I begin the questioning on our end here on—with the Members, I would also like to point out that we also have another subcommittee running downstairs, Health is, and so many of us also, including the Chair, are also on Health, and so we're going to have to go back and forth between the two subcommittees. But I just wanted to mention why you see the movement of Members in and out of the subcommittee today.

So it's not that they don't want to hear your testimony or be here for the entire—they're just covering for two. And it's always a fun day when we have three running, so we can really keep moving.

But I'm going to begin the questioning and recognize myself for 5 minutes.

And, Mr. O'Rielly, as I've said, the infrastructure law was a missed opportunity to enact meaningful permitting reform. That's why we need to make those changes now. If Congress does not act to roll back certain permitting requirements, what are the risks for the future of broadband deployment in these hard-to-reach areas?

Mr. O'RIELLY. Thank you for the question. You're absolutely right that reform is necessary. The last time that I remember that Congress addressed these was in the siting provisions in 2012, the last time I was here working in the Senate. If we don't go forward as a nation, if we don't—if the committee—subcommittee is unable to fix some of these issues, then broadband will be delayed. Broadband deployment will be extended, the timelines will be much farther out, and the costs will be—you know, will be exceptional for the providers themselves.

And this is not something that is—that we just learned of. We have providers in the RDOF Program, the FCC's RDOF Program, who are the canary in the coal mine, who have been trying this for a number of years to deploy and have run into these exact problems. It's not something that we just came up with. These things will delay and—delay deployment and cost more money, and that will leave a portion of population unserved after all the money has been spent.

Mr. LATTA. Well, thank you.

Mr. Saperstein, over the last decade, the FCC has taken a number of steps to streamline permitting for wireless infrastructure. These actions include imposing shot clocks for reviewing applications, deemed granted remedies for missing deadlines for reviewing applications to modify existing wireless towers, and limiting fees. How have these changes helped accelerate deployment, and why should Congress codify these changes?

Mr. Saperstein. Thanks for your question, Mr. Chairman. So as you mentioned, thanks to Congress' leadership, starting really with the 6409 Act addition, the FCC has done a number of interpretations that have really made the siting process much more streamlined and efficient than it was before that. But the reason we need Congress' help is because those reforms are not necessarily permanent.

As I mentioned, the proof is in the pudding in terms of the FCC's reforms and the overall improvements that we've seen. We've seen 5G deployed at a rate that 4G never was. We've seen twice as

many—well, more infrastructure deployed over the last 2 years after the FCC's action than in the previous 7 combined.

The FCC's reform—interpretations of Congress' actions are making a big difference, but we're afraid if Congress does not step in to act and does not codify the reforms that the FCC has made, that challenges like the one going on right now in the Ninth Circuit for the 5G upgrade order could backslide on all of those. And so, we can't afford to have that. We can't afford to go back to where we were. We need to keep charging forward with our wireless infrastructure, so we'd appreciate your consideration.

Mr. Latta. Yes, let me follow up, because again, something you mentioned—something I—I'm not sure I've ever heard here in committee, that you mentioned that, you know, the problems you're—that folks out there are finding, you know, not only as far as shot clocks and things like—but refusing to accept an application.

Mr. SAPERSTEIN. Yes, I mean, and so this goes I think to part of what—

Mr. Latta. And I guess one of the questions is how do we—who should we do that here in Congress to make sure we're—you know, we're legislating on something like that because not accepting an application, saying, "Sir, we're not going to take it today, or tomorrow, or whenever."

Mr. SAPERSTEIN. Right. And some of the reforms that are proposed here, they provide accountability, and that's one of the key things that we seek. And that can be in the form of a deemed granted measure.

So there's a certain shot clock. There are provisions in there for when an application is deemed complete, so it's clear to the jurisdiction, as well as the applicant, you have submitted a completed application, there's an established period of review, which is appropriate, and from there, jurisdiction either needs to act or the application would be deemed granted.

Mr. LATTA. Well, thank you.

Mr. Romano, in my last minute and 10 seconds, a similar question for you. The FCC has taken some action to streamline wireline deployment, including one-touch, make-ready rules and prohibiting moratory on deployments. What reforms have not been acted up by the FCC that Congress should consider to streamline the wireline permitting process? And, I'm sorry, I only got about 50 second left.

Mr. Romano. So I'll just—thank you, Chairman, for the question. I think something like the Broadband Leadership Act is something we look to, for example, as a terrific measure to move some of these forward. They address some of the concerns that Mr. Saperstein raised as well in the wireless context.

For example, when applications are considered complete, there is a definition in the bill of that process, received and complete, which is terrific. We've seen cases in Michigan, for example, where the provider didn't hear for months about the status of its application despite inquiries. These measures would help to instill, I think, definitional important—definitional certainty in the process, promote communication, and ultimately, I think, lead to better results in terms of knowing where one stands at the very least in this process.

Mr. LATTA. Well, I appreciate that. And again, you know, what we want to get done, we want to make sure that our unserved areas get served, you know, our underserved areas get better service, and we don't end up in situations where you might have served areas being considered unserved. So we want to—these are all the things we're looking at.

But my time's expired, and at this time I'm going to recognize the gentlelady from California, the ranking member of the sub-

committee, for 5 minutes.

Ms. Matsul. Thank you very much, Mr. Chairman.

Last year I wrote a letter to the Biden administration urging the Departments of Transportation and Energy, along with NTIA to coordinate on the deployment of electric vehicle charging and broadband infrastructure. Much of the disparities we see in broadband access are also present in EV charging infrastructure. Low-income and rural areas lag behind. Colocating EV charging and broadband infrastructure can address multiple national priorities simultaneously and avoid duplicative permitting requirements, maximizing impact of this funding.

Mr. Saperstein, do you believe coordinating infrastructure deployment efforts in IIJA with broadband expansion can help reduce

deployment barriers and stretch Federal dollars further?

Mr. Saperstein. Thank you for the question. Yes, absolutely. One of WIA's core tenants it to make shared use of infrastructure.

Ms. Matsul. OK, thank you very much, Mr. Saperstein.

Much like dig-once, I really think this type of colocation can speed broadband deployment. I ask unanimous consent to have this letter introduced.

Mr. Carter [presiding]. Without objection.

[The information appears at the conclusion of the hearing.]

Ms. MATSUI. OK. Mr. Falcon, this is a question for you. In addition to deployment challenges, we can't lose sight of the critical adoption equity work we need to do to truly close the digital divide. I introduced the Digital Equity Foundation Act to establish a nonprofit foundation that would channel public and private investments into making progress boosting adoption in digital literacy.

Mr. Falcon, can you discuss the role equity and adoption plays in closing the digital divide, and do you believe additional resources

are needed to support these efforts?

Mr. Falcon. Thank you for the question, Ranking Member Matsui. Absolutely. I think there is an awful lot of opportunity in helping a large segment of the population learn how to interface with the internet. You know, a lot of them need, you know, actual assistance in understanding, you know, the value of the internet, the resources available to them. And efforts that promote adoption are

going to be necessary for quite a long time.

Ms. Matsul. OK. While it's understandable that Federal agencies approach property management differently, significant discrepancies between their approaches to permitting can be extremely burdensome for broadband deployment on public lands. Mr. Saperstein, how do these—those diverse and conflicting requirements hinder broadband deployment on Federal lands, and do you believe they have a disproportionate impact on rural broadband access?

Mr. Saperstein. Yes, I mean, when it comes to wireless infrastructure, the last remaining areas that are unserved by wireless are often in rural lands, and often those areas coincide with Fed-

eral lands as well due to park land.

There are success stories. We know that some of our members have recently worked, for instance, in Utah to work closely to bring service there. But what we don't have right now when it comes to siting on Federal lands is a clear sense of clarity for how the processes should exist; accountability, what happens if you miss the deadlines that Congress has worked so hard to install; and transparency, where are we in the process. Even knowing that would be extremely helpful.

Ms. Matsul. OK, fine. Thank you.

And, Mr. Falcon, can you discuss how these arbitrary fee scales can disincentivize innovative broadband financial models?

Mr. Falcon. Absolutely. So one of the things that fiber infrastructure provides from a financial planning standpoint is longevity. So you can look at it with a very long timetable of how long your investment will be worthwhile, and that opens up a lot of op-

portunities in terms of long-term financing

However, if there are fees that essentially—in my written testimony, demonstrated a fee that kind of scaled up the cost of the monthly, annual cost of deploying additional fiber strands, that kind of destroys the model of any sort of long-term planning. A lot of these will need—you'll—on the early years will need to look for subscribers and opportunities to sublease.

Ms. Matsul. OK. Well, permitting barriers can prevent deployment in certain circumstances. The biggest impediments have always been economic considerations. For rural and low-income neighborhoods, this historical legacy has produced a digital divide we're attempting to close with the BEAD Program.

Mr. Falcon, can you discuss limitations of permitting reform in addressing these considerations and how BEAD can help support the access in these historically underserved areas? And I don't have much time. We have 30 seconds to discuss this.

Mr. Falcon. Certainly. So, I mean, the local community, the local government has always been the negotiating arm on behalf of the local community, so ensuring that they're part of the process, to ensure that there's equitable deployment of the network in applicants is key.

Ms. Matsul. I find that very true since I met with some of my people, and they feel the same way in these small villages and community areas. So anyway, thank you very much, and I yield back

the balance of my time.

Mr. Carter. The gentlelady has yielded back. The Chair now recognizes the Chair of the full committee, Ms. Rodgers, from Washington State.

[Phone ringing.]

Voice. Oops, excuse me.

Mrs. Rodgers. Thank you, Mr. Chairman. The Federal Government owns a significant amount of land in the western Stateshundreds of millions of acres—and many of these areas are unserved despite billions of dollars of private and public investment that has historically gone into broadband deployment.

Mr. Romano and Mr. Saperstein, can you discuss the challenges your members face trying to deploy on Federal lands and how we

can make this process easier?

Mr. ROMANO. Sure. Thank you for the question, Chairwoman Rodgers. To start, I think the issue on Federal lands is getting—as Mr. Falcon mentioned as well, for fiber, for example, it's a long-term investment. We're trying to plan for years ahead, and also trying to plan around build cycles and timeframes and seasons and the like. And the predictability is so important in trying to plan, especially for smaller providers, many of whom are based in rural America and want to serve the communities in which they live, trying to plan to get contractors on site, trying to plan to get supplies in, all of these things are specific challenges that not only prevent potentially private deployment but also can deter potential participation in public programs to the extent that I cannot necessarily specify when I'll be able to deliver, the cost of delivering.

All of those things make it much harder to both deliver on the promise or even participate in the programs that would help with

that.

Mrs. Rodgers. Right, right. Thank you.

Mr. Saperstein, would you speak to maybe any ideas you have

as to how we can make the process easier?

Mr. Saperstein. Yes. We were excited to see two bills that dealt with portals, and this is a simple but really helpful fix that would at least allow applicants to know where they are in the process. Currently, there is no transparency into where they are from—with the Federal land agencies, so that would be a very helpful fix.

Mrs. Rodgers. OK, thank you.

Mr. Finkel, I've heard from some providers that the cost of pole attachments is high and is a barrier to broadband deployment, and I understand that some pole attachment rates are regulated by the Federal Communications Commission, FCC, or the States, while some, those are—those set by municipal or cooperatively owned utilities are not. I wanted to ask you to speak to how cooperatives determine their pole attachment rates and how they compare to the regulated rates.

Mr. Finkel. Sure. So I appreciate the question, Madam Chair. Pole attachment rates, as determined by—at least, I can only speak for electric cooperatives, is really based upon what the true cost is for that attachment. In many rural areas, there are more poles than people, and so when we're looking at what the cost is to attach that pole, the cost is truly the cost. And there's no profit motive, though accusation has been made that we're in the business of trying to impose higher fees for access. It's based on the geography, on the density, on the demographic of that community.

And so when you're talking about trying to connect these rural communities, I mean, our members, they're the provider of last resort. They were in electricity 80 years ago, and they are now in many rural communities where they're providing that broadband

service because nobody else will show up.

I mean, it's—so for us, reliability and affordability of the electric system is the first priority, and so when we try to establish that fee, it's a fee based upon what's going to keep that pole safe and

what's going to ensure that we get back the true cost of that attachment.

Mrs. RODGERS. Thank you for those insights. I appreciate what you do.

I wanted to ask Mr. O'Rielly if you would also speak to this issue.

Mr. O'RIELLY. Yes, I appreciate the views of my fellow—I don't—fellow panelist, but I don't agree. You know, we have providers that are right next to the exempt entities that are offering and able to comply with FCC rules and rates, and are not going bankrupt and are not putting health and safety at risk.

This exemption doesn't match up with cost. There's a number of studies that have been done that the rates are two to three times more expensive on the exempt entities than on nonexempt entities, and that's just not something a provider—you know, we talk about areas that are unserved and why there's, you know, a carrier of last resort, someone who is offering service. Well, Congress is going to provide a—is providing a boatload of money to help provide access and buildout.

It has to deal with the issue of these rates being—you know, we're not going to bury all of the poles and fiber, we're going to have to attach—excuse me, attach to the poles that already exist.

Mrs. Rodgers. Well, this is an issue that we're—appreciate your

insights. We got to work on this some more.

I want to—in my time remaining, one of my priorities is to strengthen American competitiveness. And we know that the Chines Communist Party wants to surpass us in wireless leadership, and it's easy for them to build the infrastructure to do that. We need to be doing everything in our power to make sure that that doesn't happen.

So why is permitting reform good overall for American competitiveness? And just incorporate that into your answers in the future.

[Laughter.]

Mrs. RODGERS. OK, thank you all for being here.

I yield back.

Mr. CARTER. The gentlelady has yielded. The Chair now recognizes the gentlelady from New York, Representative Clarke, for 5 minutes.

Ms. CLARKE. Good morning. Let me start by thanking our panel of witnesses for joining us today, as well as Chairman Latta and Ranking Member Matsui for convening this important hearing on broadband deployment.

Access to reliable high-speed internet is essential in our increasingly digital society, and I'm proud of the work this committee has done to bridge the digital divide in America. The historic bipartisan infrastructure law provided billions of dollars in Federal funding to bring high-speed internet to the millions of Americans still lacking access. As we continue to grow as a nation and expand our digital infrastructure, it is vital that these funds are used to bring broadband to communities historically left out of certain opportunities and investments.

Unfortunately, the stark reality is that many of the communities that were disproportionately denied mortgage loans in the 1960s are the same communities that are without high-speed or any internet access today. So I look forward to working with my colleagues on this committee to explore pathways to equitable streamline—equitably streamline permitted processes, bridge the digital

divide, and unleash the full potential of our Nation.

My first question is directed to Mr. Falcon. As this committee looks at efforts to streamline broadband deployment, what factors should we consider to ensure that low-income minority communities have been—who have been subjected to both traditional and digital redlining in the past do not continue to be left behind? And

other witnesses may feel free to chime in as well.

Mr. FALCON. Certainly. Thank you for that question. The—I mean, I think the fundamental goal of all of these applications and the funding is ensuring that the infrastructure is built equally and equitably to all people that are in need of it. The history of cherry picking and redlining has given us—has given Congress the reason to have passed the digital discrimination rulemaking. So ensure we don't forget that we had to do that, and prospectively going forward ensuring equitable distribution of these networks is vital.

Ms. Clarke. Would anyone else like to chime in now? Mr. Ro-

mano.

Mr. ROMANO. Thank you, Congresswoman. I'll weigh in as well representing more rural areas specifically. I think one of the important things that Congress has done and that Congress should continue to do, and the funding agencies as well, is to make sure that when providers are receiving funding, for example, that there is a commitment to serve throughout the entirety of the area for which funding is provided without differentiation between particular communities within that serving area.

I think that is a critical piece of this, and it does underpin I think a lot of the recent grant programs and other funding programs, but the accountability and the backend of tracking whether

that is, in fact, happening is going to be critical as well.

Ms. CLARKE. Very well.

Mr. Saperstein?

Mr. Saperstein. Yes, thank you for the question. I just wanted to point out that one of the great benefits of wireless infrastructure, particularly shared wireless infrastructure, is it allows multiple service providers to attach to the same facility, and therefore, multiple network providers to serve that community. We saw the benefits of this with 99 percent coverage with 4G LTE, and we're already well on our way ahead of pace with 5G.

Ms. CLARKE. Very well, thank you.

In your testimony, Mr. Falcon, you acknowledge that previous deregulatory efforts failed to spark industry competition. It did nothing to mitigate the digital redlining we see today. I'd like to

dig into that topic a bit more.

Can you explain to this committee the negative impact of digital redlining, particularly how it perpetuates poverty in low-income and minority communities, and why haven't previous efforts by the FCC to streamline permitting for broadband deployment resulted in buildout in digitally redlined communities?

Mr. Falcon. Certainly. So the natural inclination of a provider would be to kind of target the most lucrative portions of a community first. In the absence of any sort of regulation to ensure a fully distributed network of full equitable deployment, that's generally where they'll stop. That's what most of these studies that we've seen over the years have shown. The markup did a nationwide analysis showing, you know, a replicated result of this type of discrimination that's occurring and the ramifications that are significant.

When we look at in terms of fiber deployment in particular, you know, there's a study by the Fiber Broadband Association that shows that property values, the value of a home when it's connected to fiber, you know, is a sizable—there's a sizable increase, so the equity of a household in a neighborhood is dependent on the wire that's connected to that household. The pandemic I think showed the significant problem when your connection couldn't handle distributed work and remote schooling. These are—this is why I call it a first-class and second-class internet structure.

Ms. CLARKE. Thank you. Mr. Chairman, I yield back.

Mr. CARTER. The gentlelady has yielded back. The Chair now recognizes the gentleman from Florida, Representative Bilirakis, for 5 minutes.

Mr. BILIRAKIS. Thank you, sir. I appreciate it very much, and I

appreciate all the testimony here.

I represent Pasco County, one of the counties I represent, and it's no stranger to horrors of the Federal permitting process. In 1998, the county identified the need for an additional emergency evacuation route for use during a flood event, such as a hurricane. That year, the county submitted its proposal known as the Ridge Road Extension Project to Federal regulators.

That public safety project sat in a regulatory quagmire for 22 years, despite the overwhelming support of the county residents and really unanimous support in the Tampa Bay area. Meanwhile, the 178,000 people who were deemed to benefit from the emergency project were put at risk. The project was finally green-lighted after President Trump issued an Executive order titled "Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects."

But we shouldn't have to rely on an Executive order, folks, in my opinion, to streamline permitting, especially for projects that promote public safety. That's why I have submitted the Coastal Broadband Deployment Act as a discussion draft for today's hearing. This bill would remove lengthy barriers to deploying or modifying communication facilities within a floodplain, which can help people stay connected during a weather event.

And I want to tell you, Ridge Road is—we finally got it done, and—man, oh man—the people love it. The community loves it, and they're—they feel safer because it is an evacuation route, God forbid we have a hurricane in our area directly. If we get a direct

hit, it's going to be very difficult.

But I want to ask the question, Mr. Romano, in your written testimony, you mentioned that your members have delays as long as 2 years due to Federal reviews when building out. Can you discuss the potential regulatory problems a company may face if they wanted to modify an existing communications facility, for example, to make it more resilient to natural disasters? If you could answer that question, I'd appreciate it.

Mr. ROMANO. Yes, thank you, Congressman, for the question. You know, one of the most confounding deployment struggles we face at times is putting something—restoring networks, putting in where previously disturbed earth is there. You would think that putting a network back in or upgrading an existing network in a previously disturbed right-of-way should be relatively seamless due to the fact that it's already been used, and it—and you would think that it's gone through reviews in the past.

Nonetheless, we run into these circumstances all too frequently, and so I think bills like the one you've talked about are going to be critical to make sure that we can get through both the NEPA and the National Historic Preservation Act and Section 106 Procedures as promptly as possible to reengage or re—and then upgrade

those networks and those places.

The one other note I would make, Congressman, very quickly, on this bill and a number of others is because they're amending existing law, they tied a 6409, which is a provision that's primarily dealing with wireless issues. So we would encourage the subcommittee and folks to think about this. I know there's some bills in here that help to amend 6409 to pick up wireline networks as well, and so we would like to make sure to see that as part of all of these measures to pick up wireless and wireline networks alike and make sure they're all resilient and can be restored quickly.

Mr. BILIRAKIS. Very good. It makes a lot of sense to me.

Mr. Saperstein, during an emergency, real-time communication keeps people informed of ongoing threats. Do you think there's—there are instances where regulatory delays and building out or disaster mitigation of communications facilities could unnecessarily threaten lives through hindered communications?

threaten lives through hindered communications?

Mr. Saperstein. Yes. And what we see right now is that much of the parklands, particularly, you know, in western districts, are still unserved, and that is really a public safety threat. So we would encourage any actions that can really expedite siting on Federal lands in order to avoid those public safety instances.

Mr. BILIRAKIS. OK, I'd like to ask this question for Mr. O'Rielly. If he don't—if we don't have time, at least he can get it for the

record.

Over the past several years, the Federal Government has allocated tens of billions of dollars of taxpayer money for broadband buildout in closing the digital divide, as you said. In your estimation, as a percentage, how much of allocated dollars are doing regulatory red tape as opposed to actually getting people connected?

Mr. O'RIELLY. I'm happy to give you more specific, but if I had to, you know, off the top, I would say it's probably around 15 to 20 percent.

Mr. BILIRAKIS. OK. That's a lot. So yes, please, if you can give us some more specific information, I'd appreciate it.

And I yield back, Mr. Chairman. Thank you.

Mr. CARTER. The gentleman has yield back. The Chair now recognizes the gentleman from Florida, Representative Soto, for 5 minutes.

Mr. Soto. Thank you, Chairman. Just a few weeks ago we got to travel to Kenansville, Florida, in our district in Southern Osce-

ola County with the Under Secretary of Rural Development, Xochitl Torres Small, a dear friend and former colleague here. We met with local ranchers and local hunting and game managers in

an area that is as rural as it gets.

And it was great to hear them talk about the 15 million being invested by the American Rescue Plan in that area. They talked about the need to download information quickly for the ranches on information related to their cattle, on information related to dove hunting. Who would have thought, right? The Osceola turkey as well, which you have to go to my district to make the turkey trot on the East Coast.

And I guess if you're not in there, you don't realize how much data is needed for all these rural businesses, and agricultural and hunting and other businesses. And so I was pleased to see that the American Rescue Plan is helping deliver internet to rural communities in Central Florida. And, Members, if you're not seeing that in your district, it's, you know, time to speak up. It's changing lives in Central Florida.

But that's just the first step. And we know with the Infrastructure Investment and Jobs Act passed recently, 65 billion improve internet access, 42 billion for the Broadband Equity Access and Deployment Program, the BEAD Program. I'm excited that Florida has taken steps to participate in the BEAD Program and signaled it intends to continue that process. We already saw 5 million awarded to help with their initial plan and grant to create a 5-year action plan, and they've received over \$7.4 million in Federal funds to support that planning.

In addition, NTIA has estimated—as well as third-party research—that Florida could receive as much as \$1.5 billion through BEAD to really help finish the job across Florida. The company in question who stepped up for areas of South Osceola was Spectrum.

And, Mr. Romano, are your member companies ready to take on

this challenge like we've seen in rural Osceola?

Mr. ROMANO. Thank you, Congressman. Yes, they're ready and eager. I think the biggest challenge—some of the biggest challenges will be figuring out-well, among other things that aren't subject to this hearing necessarily, supply chain considerations, finding trained workforce.

But permitting issues, again, will be a piece of the puzzle. Our members have been—actually, I would say probably the active participants in the reconnect program, so great partners with rural de-

velopment. I think we're excited about the promise of this.

The biggest concern I have right now is we-as I mentioned in my testimony, we're on the precipice of massive amounts of investment coming in, and we need to make sure both the procedures are ready to go but also the staff skill sets and training are there, and to—and the systems to make sure, as Mr. Saperstein mentioned, the portals, to make sure that we can see-realize the promise of all of these different programs out there.

Mr. Soto. Thank you.

And, Mr. Finkel, this is Peace River country, one of your members, and I know they've been eager since—we won't see—we'll see a combination of companies help with this. How are your members gearing up, and what are you hearing from your customers about

the potential of getting higher-speed internet?

Mr. FINKEL. Well, Congressman, it's always driven by the local community, as electric utilities are owned by the communities we serve. When the community speaks up and our kind of ownership base drives us to build out and asks us to partner, we do. It's just really that simple.

Mr. Soto. Well, we're excited to work with our local folks as well.

Mr. Falcon, we saw the Biden-Harris administration put out a permitting action plan. There's a lot of discussion in the cornucopia of bills of today in this hearing of how to address permitting as we implement the Inflation Reduction Act and the Infrastructure Law. Do you have any comments on the permitting action plan by the Biden-Harris administration and any other principles that you think can guide as we have to permit these projects?

Mr. FALCON. Yes, I think it just demonstrates that everyone is committed to the success of implementation of BEAD. No one wins if systemic delays results in rising costs, particular for small appli-

cants, particularly new entrants into the space.

I think, you know, as I say in my written testimony, really just predictability and predictability in the cost in terms of the fees on public lands are probably the two best things you can deliver in order to ensure successful outcomes.

Mr. Soto. Thank you so much.

Members, our oversight is going to be a key part of this as well as we work with the administration, with our colleagues in Congress, so I look forward to continuing that work. And I yield back.

Mr. LATTA [presiding]. Thank you. The gentleman yields back, and at this time, the Chair recognizes the gentleman from Michigan's Fifth District for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman, and thanks to the

panel for being here.

Broadband providers are subject to significant permitting delays, as we've talked about already. Delays are felt by the consumers. The frustration of some of my neighbors seeing me with broadband finally and not seeing themselves with a sight of broadband coming down. I felt the same way for a number of years myself, and so it's a challenge. Connecting everyone to broadband is a goal we all share.

Billions of dollars have gone out the door, but it takes dollars, it takes many hands to make it work. And oftentimes we don't see interagency coordination, and maybe through no fault of their own, but the process that takes place. The FCC, NTIA, USDA, and various stimulus grants over the years have often appeared to compete with one another.

And so, Mr. Romano, how do we improve coordination between agencies? And if I could add on to the question, do you believe requiring all government broadband programs to make distributions based on FCC's new broadband maps can break the decades-long cycle of overbuilding and the problems that come from that?

Mr. Romano. Thank you for the question, Congressman. The second part of your question actually I think was the first place I was going to go in terms of effective coordination, which is the use of

a singular data source to start from.

Now there are always going to be issues arising in terms of the maps that are presented by—produced by the FCC being snapshots in time and needing updating. There are processes set forth in BEAD, for example, for States to run challenges. But at the end of the day, we should be starting from a singular data source that reflects the best source of information we've got available. So I think that is going to be a critical starting point for coordination.

The other part of coordination that's going to be important is sharing of information about enforceable commitments that are made, grants that are made among these agencies so that if NTIA sees that the FCC has done something over here, NTIA is not necessarily putting money there or vice versa. So I think that sharing of information about enforceable commitments feeding into the broadband mapping exercise, those are two of the most critical pieces of communication that can happen.

Mr. WALBERG. It cuts down a lot of waste, too. Yes.

Mr. Saperstein, while permitting delays can be a barrier to deployment, should we also be concerned about other potential bottlenecks, including supply chain delays, workforce shortages, and what efforts are underway to ensure we have the labor force in place to get the job done?

Mr. SAPERSTEIN. Congressman, thank you for the question. WIA actually is doing a lot on the workforce front. We are partnered with the Department of Labor, with the telecommunications industry registered apprenticeship program, which has thousands of apprentices in the pipeline now working with over 80 employers.

We couldn't agree more that we can't allow our human workforce, our human infrastructure, to become a bottleneck here, and so we're working to train the next generation.

Mr. Walberg. Yes, so necessary. Good jobs out there, too.

Mr. Saperstein. Absolutely.

Mr. Walberg. The slate of bills we're discussing today includes my Brownfields Broadband Deployment Act, which would help streamline the deployment of broadband projects entirely within Brownfields sites by eliminating the requirement to prepare an environmental or historic preservation review. These sites are often located in digitally underserved areas, and the proposed changes will help promote greater digital connectivity.

In Vicksburg, Michigan, where I was just last week, in fact, they are creating a one-of-a-kind facility for lodging, entertainment, artist development in a town of less than 4,000. Located in a former paper mill, this brownfield site will hopefully bring incredible economic growth to the area, but they have a problem with connection.

Mr. Romano, how important is broadband connection to the economic viability of rural areas, and how could a longer regulatory approval process for broadband infrastructure destroy that opportunity?

Mr. ROMANO. Thank you, Congressman. So at NTCA, we believe not only that networks need to be built but they need to be used and celebrated, and that those—the best practices should be shared. I mean, economic development—we have a program called Smart Rural Community that highlights the fact that these networks are not just built for their own sake but for the benefit ulti-

mately and uses of the community for telehealth, telework, eco-

nomic development, and the like.

Those types of uses, especially in a town of 4,000 people—that's about the average size of the biggest city in the type of areas that our members serve. That's a difference maker in terms of rural attracting new people to rural areas and just getting people to come back home after school, so it's incredibly important.

And permitting's a big part of that. If providers go to—again, as I said earlier in an earlier question, if it takes them—if they look at a program and think, "I could do this but for the fact that I don't know that I can meet the buildout deadlines because I don't even know when my shot clock's going to start," that can be a real deterrent to participation.

Mr. WALBERG. Yes, and this is a visionary community, they believe in their community. It's a neat site. It will be unbelievable if they get it done, but this is a key component to it.

So thanks for your attention, and I yield back.

Mr. LATTA. Thank you. The gentleman yields back, and at this time, the Chair recognizes 5 minutes to the ranking member of the full committee, the gentleman from New Jersey, for 5 minutes.

Mr. PALLONE. Thank you, Chairman Latta.

Affordable, reliable broadband service is a resource that every community needs and every community wants, and so I have some concern that broad measures by Congress to trample on local authority and treat every community the same will end up creating

more problems than they solve.

So let me start with Mr. Falcon. In your testimony, you point to examples of when past deregulation efforts have not closed the digital divide but have, in fact, exacerbated the problem. So what lessons should we keep in mind about the role of municipalities and local leaders in broadband deployment, and how can proposals to remove local consultation and authority hinder efforts to connect all Americans to high-speed internet?

Mr. FALCON. Thank you for that question, Ranking Member Pallone. I think the big lesson to have learned is just looking at the results of what has happened when you compare two similar situated markets: Los Angeles and New York City. New York retained local authority for franchising, and California didn't. California consolidated under the State government. New York is pushing fiber to the home to hundreds of thousands of low-income households—New York City, that is. And Los Angeles has less than half of their community connected to 21st century access today.

You know, these are both very similar areas of density in terms of income and opportunity, business sector, but the removal of the local community from negotiating with ISPs, from ensuring equity in the deployment, ensuring a ubiquitous deployment, yields these results. So I think that is the number-one lesson to learn from removing local power, removing the local community from the equation and working with ISPs. They're eager to work, but they also want to make sure everyone is covered.

Mr. PALLONE. All right. Now, many of the witnesses today have pointed to a lack of resources at permitting agencies as a cause for delay and other challenges in the review process. But, again, Mr. Falcon, what is the risk to communities and the public at large if we ignore those resource restraints and focus only on strict approval timelines and deemed granted provisions, if you will?

Mr. Falcon. Absolutely. Thank you for that question. The challenge here that we're facing is this is the largest public works projects happening in many areas for decades, and they don't have the staffing in place to handle that. So staffing up and providing the personnel resources to review these permits in an expeditious way resolves the issue. It's not really about removing the government or taking—getting the government out of the equation. The government is an inherent and necessary partner for the success of the deployment of these areas. The ISPs cannot completely go it alone to be successful at their deployment plans.

Mr. PALLONE. So would you agree, then, that unless permitting agencies at the Federal, State, local, or Tribal levels get additional resources for personnel and training, we're not going to fully ad-

dress delays in permitting for broadband infrastructure?

Mr. Falcon. I think there's a whole list of unforeseeable complications that will come up, particularly for—and I would like to distinguish between, you know, upgrading areas where existing rights were already utilized versus, you know, new construction. A lot of this money is going towards new construction and new areas. Lacking knowledge of the local area because the managing government agency is the one with that knowledge could be detrimental to deployment planning.

Mr. PALLONE. All right, thanks. I've just got another question or

so to Mr. O'Rielly. It's good to see you here today.

I'm concerned that efforts to complete our historic buildout of reliable high-speed broadband to every corner of the country will still leave too many people behind unless we continue to focus on ensuring that everyone can afford the service regardless of income. So I know that—I'm sure you can answer—or if you could just briefly discuss funding for the Affordable Connectivity Program, why it's important to close the opportunity gap. Well, I know because you've been involved with it, obviously.

Mr. O'RIELLY. I have supported and do support the ACP. I believe that additional funding from Congress would be wisely spent. Affordability is a component for a number of American families who—you know, we can get broadband to everybody, but if they can't afford it, then they're not going to be able to subscribe.

The program is working today. It's probably in the best—the best program in terms of its structure that we've had, and there have been a number of programs in the past that have had deficiencies, and we've solved some of those with ACP. So I think additional funding would be appropriate, but that's also with another committee to work through in terms of going forward.

Mr. PALLONE. Well, you know, we can push them, as you know. [Laughter.]

Mr. O'RIELLY. I think that would be smart for both sides, and I support—you know, as a fiscal conservative, I think it's money well spent.

Mr. PALLONE. All right, thank you so much. I don't—I guess I'm out of time, so I'll leave it at that. Thanks a lot.

Thank you, Mr. Chairman.

Mr. LATTA. Well, thank you very much. The gentleman yields back. And at this time, the Chair recognizes the gentleman from Georgia, the vice chair of the subcommittee, for 5 minutes.

Mr. CARTER. Thank you, Mr. Chairman, and thank all of you for

being here.

Before I ask my questions, I want to respond to the ranking member's comments earlier about broadband permitting barriers not existing. I could not disagree more. They do exist, and the witnesses here today have already cited examples of where they exist, and I'm sure we'll cite even more examples. Even the current FCC Chairwoman has also acknowledged that these barriers exist.

In 2018, when the Republican-led FCC embarked on an effort to revise its infrastructure rules to promote expansion of 5G, Chairwoman Rosenworcel suggested in her statement that, "If we want broad economic growth and widespread mobile opportunity, we need to avoid unnecessary delays in the State and local approval

process."

While we may disagree on the approach, we must all acknowledge that these are real problems and they deserve real solutions. So I appreciate you bringing up these examples that you've brought up. And with all due respect, I am encouraged to hear the ranking member say that he's concerned about local control, a long-held Republican view that I'm glad that is being shared now with some of our colleagues, so I appreciate that.

You know, Mr. Chairman, I appreciate this hearing because this is extremely important, and as vice chair of this committee, it's one of the things that I really wanted to concentrate on. And one of my top priorities is to close the digital divide that exists, particularly

in rural America.

For those of you who don't know, I'm from Georgia. We have a saying in Georgia: There are two Georgias—there's Atlanta, and everywhere else. And I represent everywhere else, so this is extremely important to me. And it's extremely important for us to continue to lead U.S.—to help the U.S. maintain leadership on broadband and wireless innovation, investment, and competition.

So, Mr. Saperstein, I want to ask you, one of the bills that we're discussing today is my bill, the Proportional Reviews for Broadband Development Act. This expedites the process for certain modifications to wireless towers or base stations. Specifically, it exempts the addition, removal, or replacement of transmission equipment on those towers or stations from environmental and historic preservation reviews.

Do you think that such a simple modification would improve the quality and the timeliness of broadband deployment for Americans?

Mr. SAPERSTEIN. Yes. Thank you for the question. So, yes, I mean, I think what your bill and what we're seeing with many of the bills affecting the NEPA review is that it adds a deal of proportionality to the review at stake. So not everything needs to be reviewed in the same manner.

Colocations don't need to be reviewed in the same manner. Things that have already gone—undergone different reviews don't need to be reviewed in the same manner. And I think it brings a commonsense approach to that.

Mr. CARTER. Thank you. And that's the key, common sense, and that's what we're trying to get at it here. Look, we all want to make sure we have rules and regulations and they're followed, but we want to use common sense and get this done and really eliminate unnecessary barriers. That's what we're all trying to do here.

Also, Mr. Saperstein, I wanted to ask you, in June of 2021, the New Jersey State Assembly passed S2674, a bill that was led by three Democrats that would institute cost-based fees, shot clocks, and deemed grant remedies for wireless and broadband network facilities. The purpose of the bill was to meet the growing consumer demand for wireless data and increasing competitive options for communication services available to the State's residents.

Chairman Latta has a bill that—the Wireless Leadership Act, that contains many of the same principles as this New Jersey State bill. Do you agree that enacting these policies would help meet the

needs of consumers and promote competition?

Mr. Saperstein. Yes. We appreciate Chairman Latta's Wireless Leadership Act and its-steps that it would take to really codify many of the reforms that the FCC has done to encourage, you know, fees that are reasonably based to the costs as well as streamlining of permitting procedures.

Mr. CARTER. Good. The New Jersey bill that passed the State Senate was also amended to accommodate the concerns of residents and municipal leaders who raised concerns. Can you describe how broadband permitting laws can balance State and local concerns

with the need for timely and fair permitting processing?

Mr. Saperstein. Absolutely. One of the things that we've seen is that we've taken out the review of colocation, which makes sense because it's making use of existing infrastructure. There's nothing in what we see here today that would remove a community's ability to have legitimate aesthetic concerns and their own processes dealt with. So there's a good balance to be struck in there, and we find that we have a good partnership with our communities.

Mr. CARTER. Great. Thank you, and thank all of you for being here.

Thank you, Mr. Chairman, and I'll yield back.

Mr. LATTA. Well, thank you very much. And our next Member to ask questions is the gentlelady from New Hampshire. You're recognized for 5 minutes.

Ms. Kuster. Thank you very much, Mr. Chairman, and thank you to our witnesses for being with us today to discuss the speed—

how to speed up deployment of broadband services.

There are a number of legislative proposals before us today, but I'd like to take a step back and further examine the challenges to broadband deployment. Addressing these challenges will allow States and providers to implement Federal broadband funding. Through the bipartisan Infrastructure Law, Congress invested an historic \$65 billion to build out our country's broadband infrastructure. This established the Broadband Equity Access and Deployment Program for States to expand high-speed services to their communities. This program will ensure that even the most rural and hard-to-reach communities, like many in my district in New Hampshire, have access to broadband.

Mr. Falcon, you spoke about how deploying this scale of infrastructure will be a major endeavor for many small communities. How should Congress ensure local governments are equipped to

meet this challenge?

Mr. FALCON. Thank you for that question. The—you know, what it—again, what it boils down to is providing the resources for personnel to kind of meet this surge of demand. This is going to be a very intense but short period of years where these projects will come in large volume, and once constructed, given that the guidance is to deploy fiber, we will not be revisiting these any time in the near future. So it's really just a matter of the surge demand and ensuring the resources are available there for them to, you know, meet that demand when it comes.

Ms. Kuster. Thank you. Now, I know that local governments will play an important role in bringing high-speed broadband service to the communities. While this hearing focuses on the deployment of broadband, these services will still be out of reach for families that can't afford them. The Affordable Connectivity Program, or ACP, is established by the bipartisan Infrastructure Law to provide assistance to eligible households to help them afford internet

services.

This program has already connected over 16 million Americans to internet services, including many, many families in my district. Unfortunately, funding for the ACP is set to run out without congressional action.

Mr. O'Rielly, you briefly spoke about the importance of addressing broadband affordability. Can you elaborate on why funding the

AČP should be a high priority this Congress?

Mr. O'RIELLY. So, as I mentioned to the ranking member of the full committee, I do support ACP. I believe it's important to address affordability component. There are a number of families in America, certainly in New Hampshire, that won't be able to afford service without such a program. I think we crossed the 17-million threshold in terms of people—families that are taking advantage of the funding. So I think it is something that has to be addressed if you're trying to figure out how to serve all Americans.

If I could just return briefly to your previous question.

Ms. Kuster. Sure.

Mr. O'RIELLY. I've spent a great deal of time in New Hampshire in a past life. I will tell you the local governments there are really sharp, and I don't know that they need necessarily the resources. It's really the areas, especially in the north country and the western part that you represent, that are—that, you know, attracting—having the subsidy that's going to come forward to actually serve those areas throughout. That's probably more important to me in terms of New Hampshire, in terms of the local governments who are actually pretty—you know, they're very small, and they do represent the people very well.

Ms. Kuster. Well, we're lucky we have a lot of volunteers that get involved in these committees who are very knowledgeable.

As cochair of the Rural Broadband Caucus, I'm committed to ensuring that communities can connect to broadband services. It's critical that Congress not only address the challenges to deploying broadband but also work to make these services more affordable.

The bipartisan Infrastructure Law set our country on a path to close the digital divide, and I look forward to working with my colleagues on both sides of the aisle to continue this work.

And with that, Mr. Chair, I yield back with 49 seconds to go.

Mr. LATTA. Would the gentlelady yield?

Ms. Kuster. I will yield.

Mr. LATTA. Thanks very much. I'd like to go back with the 40 seconds that are remaining, a question—just a quick question.

Mr. Finkel, in your statement you mentioned that with right-ofways on Federal lands that when you already have the lines up that you have to renegotiate for the broadband, and I assume you're deploying a line across it, and so what's the difference? You know, this is the commonsense question.

Mr. FINKEL. Yes.

Mr. LATTA. It's already there and you're putting another line up.

Mr. FINKEL. So, many rural electric cooperatives are either criss-crossing or abutting Federal lands, whether it's U.S. Forest Service, BLM, and so we'll have existing electric infrastructure, and we'll have existing right-of-way and existing easement, and to put up broadband onto the same pole in the same right-of-way with the same easement requires a Greenfield review in many cases.

Mr. LATTA. OK. I just wanted to make sure I had that clarified.

Thank you very much.

And I appreciate the gentlelady yielding. The gentleman from Florida's Second District is recognized for 5 minutes.

Mr. DUNN. Thank you, Chairman Latta.

So as he said, coming from the Second District of Florida, we know how damaging natural disasters, such as hurricanes, can be to communications infrastructure when it matters the most. You know, communications facilities, including wireless and wired infrastructure and power sources, shelters, et cetera, they're all essential after a disaster and must be restored quickly, efficiently.

That's why I plan on reintroducing my bill, the Connecting Communities Post Disasters Act of 2023. My bill provides that after a major disaster declared by the President, projects to replace and improve communications facilities will not be subject to the requirements to prepare environmental historical preservation reviews, which become massive obstructions. You know, this requirement leads to needless delays, and it happens during a crisis when it's most essential to restore these services.

You know, when your community is damaged by a natural disaster and it's struggling for essential communications infrastructure, imagine the frustration that barriers such as a mandatory environmental preservation review, you know, can cause. These are reviews that were performed previously when the infrastructure was first built. I think it's nonsense red tape, we've addressed that earlier, that must be corrected and for the good of relieving all Americans.

Mr. Saperstein, in your testimony, you mentioned that Congress has made progress on removing barriers to the wireless infrastructure in the past, and yet broadband is still out of reach for far too many people. Do you agree that wireless connectivity is especially important during and immediately after natural disasters?

Mr. Saperstein. Thank you for the question, Congressman. Yes, I mean, I think the first place most people reach in order to get in touch with their loved ones is to their cell phone and so they can reach out and make that connection, so wireless connectivity is absolutely a key. And your bill makes very—a number of commonsense points with respect to need and reform.

Mr. Dunn. I experienced that firsthand after Hurricane Michael. We went 13 days without our cell phones. You can imagine, you know, several counties like that. We were really wandering around lost. So both baseline connectivity and, of course, resilience and

restoration after a disaster is very important.

Are you familiar, sir, with any regulatory barriers to wireless deployment, specifically when recovering from natural disasters?

Mr. Saperstein. So most of—when it comes to natural disasters, the physical infrastructure is generally pretty resilient. What happens is we often lose power, and that's one of the key elements that we need to make the overall systems run. There's backup power, but that only exists so long and, you know, the providers themselves are not independent sources of commercial power. So that's one of the reforms that we really need to see overall.

Mr. Dunn. Yes, our problem is we lost all our towers. I certainly agree with the need for resilient infrastructure, and I encourage all of my colleagues to support this legislation or to increase our Na-

tion's ability to respond and rebuild after disasters.

Mr. Romano, as EVP of the Rural Broadband Association, I'm especially happy to see you here. Can you share with us what the biggest regulatory burdens, challenges, or inefficiencies are impact-

ing wired connectivity in rural areas?

Mr. ROMANO. Thank you, Congressman, for the question. Yes. So fundamentally making the business case for investing in rural areas where distances are measured in tens or hundreds of miles and densities are very low, that is a significant issue, and obtaining permits in order to deploy across those areas can be significant barriers I've talked about.

In particular, I think things that we see frequently, and I had mentioned briefly on a question earlier, replacing—so our members have been in these communities in many cases for decades or hundreds of years or a hundred years in some cases, and—but the problem becomes replacing or upgrading networks in these existing facilities, or restoring in the case of natural disasters. We have to go through, oftentimes, repeat reviews under the National Historic Preservation Act, Section 106, or NEPA.

The ability to make sure we can upgrade these networks in an efficient fashion to get better broadband out there, more resilient broadband out there, bury the networks if we need to, that's a sig-

nificant regulatory impediment today.

Mr. DUNN. Thank you very much for that. I'll take that as an endorsement of my bill. It's an important, you know, thing for us to streamline connectivity development and restoration in the United States. I just want us to stay out of our own way, you know, with excess permitting needs, and so I think if we do that, we can help everyone in the United States.

With that, Mr. Chairman, I yield back.

Mr. LATTA. Thank you. The gentleman yields back, and at this time the Chair recognizes the gentleman from California's 29th District for 5 minutes.

Mr. CÁRDENAS. Thank you, Mr. Chairman, and also thank you, Ranking Member Matsui, for having this important hearing on broadband.

As we all know, in November of 2021, President Biden signed the Infrastructure Investment and Jobs Act into law. Through this legislation, Congress made a \$65 billion investment towards eliminating the digital divide and delivering affordable, reliable, high-speed broadband to every American. In the next few months, the NTIA will begin providing grants to States and territories to deliver broadband access to underserved areas across our Nation.

While this is truly a historic investment in our country's infrastructure, Congress' work still is not done. Affordable broadband to every American is far from over. We have a lot of work to do.

Specifically, there are various permitting application and review processes that must take place before broadband can be deployed effectively. Some of my colleagues are highly skeptical of the value of these processes. I, on the other hand, believe that these processes are important to keeping communities safe, competition robust, and ensuring that important stakeholders are not ignored.

That having been said, permitting should not be overly burdensome. Construction of these critical projects should not be delayed by endless reviews or unreasonable fees. We must strike a balance between protecting communities and expanding and improving

broadband in an efficient and cost-effective manner.

Mr. Falcon, in your testimony, you gave an example of how policies in New York yielded more equitable results and brought more fiber to homes, more than my little hamlet of Los Angeles in the 2000s. Using the quote from one of my colleagues as she described hamlets in her district, so I felt a little jealous. Can you provide—it sounds cozy. Can you provide other, more recent examples of State or local governments that can serve as models for expanding high-quality, reliable broadband access to their residents?

Mr. Falcon. Certainly. So, as I mentioned before, the—you know, the local government is I would say a valuable partner to the industry because of the rights-of-way. The taxpayers funded the infrastructure that allows these networks to deploy. You know, I think one of the best examples from California is Brentwood, California. In Brentwood, California, the city required developers to build conduit and deed it to the city, so a large underground conduit network was available for a competitive fiber provider called Sonic to deploy what I would say is probably the fastest, cheapest private internet: \$40 for one gigabyte, \$50 for 10 gigabyte internet.

That was, you know, really a product of smart local planning and coordination with the local government to really eliminate most—the most expensive part of construction was the civil works in deployment. I think if more communities made their rights-of-way accessible and kind of preplanned for the—you know, the advent of new entrants coming in, that pays itself off quite handsomely as these applicants are coming in.

Mr. CARDENAS. OK. Also, Mr. Falcon, a lot of your work and that of your organization is focused on connecting historically under-

served and underprivileged communities with modern high-speed broadband. Can you talk about the importance of the Affordable Connectivity Program now and into the future in meeting our goal of universal connectivity, and how would a permanent affordability program level the playing field between high- and low-income com-

munities competing for providers to serve them?

Mr. Falcon. Thank you for that question, Congressman. The ACP, if it were to be made permanent, I think, would radically change the financial planning of many providers that are motivated to serve entire communities. One of the first things I started asking a lot of the people in the kind of the public and the private industry when ACP was first enacted is how much did that—how much does this change the way you think about where you can deploy and finance it. And the answer was not enough, because it was temporary.

You know, we want to have, you know, 10-to-30-year, maybe even 40-year plans, and if this money runs out within 5 to 6 years, we really don't make a plan around that. We don't really expect a revenue source from low-income subsidies as a means of helping fi-

nance the overall network.

But if Congress were to make the ACP permanent, I think you would see a lot more expansion of these networks, simply because the predictability and the dependability of the revenue and how you change the attractiveness of low-income users to many in the industry would be significant.

Mr. ČÁRDENAS. So are you describing that a longer plan would actually spur public-private participation to bring more accessi-

bility to more Americans?

Mr. FALCON. A permanent ACP would, I think, expand private providers and public providers and all players, cooperatives as well, their capacity to deploy fiber simply because the dependability of the revenue for parties who can't afford the internet will be there, and that changes a lot of financial models.

Mr. CÁRDENAS. Thank you, Mr. Chairman, I yield back.

Mr. LATTA. Thank you. The gentleman yields back, and the Chair recognizes the gentleman from Utah for 5 minutes.

Mr. Curtis. Thank you, Mr. Chairman, Madam Ranking Mem-

ber, thank you for holding this hearing.

I find myself, as I'm listening to this thinking, I think we all agree on this. Like why can't we move forward, why can't we solve this? And I also feel like there's a little bit of oneupmanship, and I'm going to try to do one upmanship over all my colleagues today and see if anybody can beat me on this.

Think about this scenario. My district is not only rural, half of it is classified as frontier. Now layer over top of that that the vast majority of it, 90 percent of the land, is owned by the Federal Government. Now wrap your arms around that for a minute. When we talk about these delays, 90 percent of this property, you—it takes

years and years and years to permit.

A great story is one of my companies had to spend the money within 5 years. The permit took 9 years to get, to go, Mr. Chairman, in an existing right-of-way down an existing road to lay that fiber. Nine years. And we want to solve this, you know, much quicker than that.

So I have a bill out there, it's the Rural Broadband Permitting Efficiency Act, and what this basically does is it turns over NEPA to the States. We do this in transportation a lot where we let the States complete the NEPA process for the Federal Government. The Federal Government's backed up. We know it takes them years and years to get an answer.

It's a great bill. It actually passed on a bipartisan basis in the 115th Congress, and I'd to commend this bill to my colleagues as

one possible solution to help us move through this.

Mr. Finkel, just weigh in on the impact of 9 years to permit. What is that costing us, right? What—help us get our arms around that.

Mr. FINKEL. Yes, I mean, you're talking about, depending on the size and scale of the project, you know, I mean, 10, 20, 30 percent more. And especially in a time where we have a constrained supply chain. So you have Federal dollars. The Federal dollars are going to expire at some point. So you don't have BEAD out there yet, right?

So if you have 9 years to spend—if you have 9 years to permit the project and the BEAD money is going to expire in j9 years, you're not going to get the project built, and even if you do, it's going to push off 5, 6, 7 years where your costs are going to go up. So your original cost estimates are going to be up considerably between now and then.

Mr. Curtis. And——

Mr. FINKEL. And that's even when you try to do it in an existing

right-of-way.

Mr. CURTIS. And so now we can understand that from a company's perspective. Imagine the constituents we're trying to serve and telling them you have to wait 9 years, right, before you can have this.

Mr. Saperstein, weigh in from your members' perspective. If we were able to fix this, what would your members be able to do differently, right, if they didn't have this—that we're all talking about—all of us are talking about the same problem here. Could you give us what that world looks like?

Mr. SAPERSTEIN. Well, the world is universal connectivity. I mean, I think that's the short answer. Where people can use their devices and be connected anywhere they go at any point, enabling

the world economy to their homes and phones.

Mr. Curtis. So I've only got just a couple minutes, and so I'm going to direct this to you and Mr. Romano and Mr. O'Rielly. Last August, NTIA and Bureau of Indian Affairs announced an agreement to, among other things, streamline the NTIA and Bureau of Indian Affairs' Environmental Policy Act reviews for Tribal broadband grants. In fact, Assistant Secretary Allen Davidson noted pridefully that NITA is "streamlining the creating efficiencies within in the Federal Government to ensure Tribal communities get the resources they need quickly to close the digital divide on Tribal lands."

I believe a lot of the Republican-led legislation that's being discussed today would streamline the environmental review process, and I'm just wondering if—I also think that's consistent with Presi-

dent Biden's approach. Can any of you describe the impact of this,

and is this part of the answer?

Mr. SAPERSTEIN. So, yes. Thank you for the question. So streamlining and efficiency are two favorite words when it comes to permitting processes. And for too long, many things, particularly on Federal lands, have been caught up in those.

Mr. Curtis. Yes. Mr.—

Mr. ROMANO. And I would just say yes. Extending—or offering that up in that program is, I think, a good case study for why it makes sense in other programs. And I must tell you, one of the most frustrating things we see is when members get grant awards, announce that a grant award has been won, and the customer is still waiting years later for that big news release they saw in the local paper that broadband's coming. So, yes, absolutely.

Mr. O'RIELLY. So we used the word coordination. I would suggest that, as nice as the presentation sounded, that Congress acting on the matters that are before it today and others, including one that you mentioned, would be very helpful. The coordination is great, and the conversations will happen between different parties at NTIA and, you know, the Bureau of Indian Affairs, but actually

getting progress is a different story.

Mr. Curtis. Yes. I'm out of time, but I'd like to urge all of my colleagues and myself included to make this a priority and move these bills that we seem to all agree on, and let's see if we can't solve this.

Mr. Chairman, I yield my time.

Mr. LATTA. Well, thank you. The gentleman yields back, and at this time the Chair recognizes the gentleman from Texas' 33d District for 5 minutes.

Mr. Veasey. Mr. Chairman, thank you. And I want to also say, you know, this is great, you know, the historic and bipartisan Infrastructure and Investment Jobs Act. We're delivering on a promise to create a more digitally inclusive and equal society. And I continue to hear stories all over Dallas-Fort Worth about helping to bridge the digital divide. We have neighborhoods now, lower-income neighborhoods that have free access to Wi-Fi so kids can do homework and people can start businesses. And the Affordable Connectivity Program, or the ACP, is also another success story that highlights the benefits of making broadband internet affordable for low-income households.

And after—California, Texas, and Florida have the highest ACP enrollment rates in the country. And I think Commissioner O'Rielly put it well in his recent op-ed, and it said, "American poverty is not isolated to urban areas but distributed throughout our country. In blue areas, in red areas, the opportunity gap resulting from un-

equal broadband access really impacts all regions."

American families from all walks of life are connecting to high-speed, reliable, and affordable broadband internet at unprecedented levels. And, for instance, in the chairman's district in Ohio, close to 50,000 households are enrolled in the ACP. The title of to-day's hearing is "Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment," but I would also urge my colleagues to engage in a conversation about the sustainability of ACP, which is targeted to help eligible households afford

broadband once it's deployed. And I hope this is an issue that we can work on together, because it's obviously something that's help-

ing all of our districts.

My question, Commissioner O'Rielly, in the op-ed that you wrote, you said, "More broadband deployment does not necessarily equate to greater adoption. Broadband will remain inaccessible to poorer families if affordability is ignored." And I couldn't agree with you more. You urged Congress to prioritize extending ACP by adding additional funds.

Can you elaborate on why you think it is so important for Congress to get to work on extending the program, which is likely to

deplete mid-next year, if not sooner?

Mr. O'RIELLY. That's right, mid-next year sounds about where the estimates are. And I just want to correct one point earlier. I think the program actually is authorized. It's—you know, we talked about permanency. I think it exists. It's really a question of the funding.

Mr. VEASEY. Right.

VOICE. [Indiscernible] your mic.

Mr. O'RIELLY. Yes, sir. I think it's a question of funding.

Mr. VEASEY. Funding. Right, exactly, yes.

Mr. O'RIELLY. And then that's something to be addressed. But to your point, I think there's a portion of American families that will all be challenged by the budgets that they face and the circumstances they face, and it's both in, you know, urban centers and also in very rural America, the jobs and, depending on the economic situations that they face, that they're going to, you know, not be able to afford broadband. And if we believe, and I do, and in my previous jobs, believe the benefits of broadband and should be available to all Americans, well, then we have to address something on the affordability side.

And I think ACP is structured the best that we've—that Congress and the Government has created an affordable program. Others have had lacking—there's still some improvements to be had here. We can address some waste, fraud, and abuse in the program. May look at eligibility. But overall, ACP is the best we've

had, and I'd like to see Congress add some funds to it.

Mr. Veasey. Yes. In your op-ed, you also talked about the positive externalities of broadband adoption with respect to helping government operate more efficiently in generating economic activity. Can you expand on that and describe the negative impacts that the loss of ACP would have on families that rely on it and on businesses and local communities if families are suddenly no longer able to afford broadband service?

Mr. O'RIELLY. Oh, absolutely. Broadband accessibility and affordability—having broadband, you know, reduces the cost for government. There's just so many services that would no longer need to be in a paper form, it will be in—you know, you can reduce populations in terms of in DC. You can, you know, scatter offices, you can do all kinds of different things that are more efficient and can reduce the cost for government services. But it's on the small business side, it's in bringing, you know, options and, you know, opportunity to so many different families that don't have it today.

In terms of services that they may have or to be able to, you know, have access to retail and so many different things that they just don't have in their local communities and the supplies and—you know. And the job side to the equation, I've been and sat in family's kitchens when they're trying to figure out how do they—you know, their job is moving away, and the employer says I can—you can work remotely, and they say I don't have broadband, what do I do?

Mr. VEASEY. Yes. Yes. No, thank you very much.

Mr. Chairman, I yield back.

Mr. LATTA. Thank you. The gentleman yields back the balance of his time, and at this time the Chair recognizes the gentleman from Pennsylvania for 5 minutes.

Mr. JOYCE. Thank you, Chairman Latta and Ranking Member Matsui, for holding today's hearing, and thanks to the witnesses for

offering your time, your expertise, and your testimony.

Americans have increasingly turned to the internet for work, for school, for agriculture, for socialization, and in telehealth. Virtually every facet of our daily lives requires fast and reliable access to this commodity. As members of this body, it is incumbent upon us to provide for our constituents and all Americans access to resources specific to this conversation, high-speed internet.

However, something that seems so simple and fundamental is often met with opposition and prolonged delays, especially with regard to buildout and permitting for this necessary infrastructure. In an effort to bridge this digital divide, I've led legislation that would cut through the bureaucratic red tape and streamline the permitting process in order speed up the deployment of critical broadband infrastructure.

As Chair McMorris Rodgers stated earlier in this hearing, rural America cannot be left behind. Rural America should not be left behind. In the 21st century, connectivity is actually a key for success, and securing better access to broadband, especially in rural Pennsylvanian communities, will benefit students, small businesses, farmers, seniors, families.

So let's start with our questions. Mr. Saperstein, when you've had positive interactions with State and local permitting office, what were those experiences like, and can other similar offices learn from your experiences?

Mr. Saperstein. Yes. And thank you for the question, Congressman. So many communities now represent—recognize the intense value that comes with mobile connectivity and wireless connectivity. And so many of the relationships that we have with our communities across the country are, in fact, positive.

The reforms that we're seeking today are to make sure that those reforms stay in place nationwide. When we have positive interactions, we are respectful of the community, representing—or rec-

ognizing their need to have a say in the siting process, but also recognizing that these facilities need to be built to ensure coverage everywhere.

Mr. JOYCE. What specific state—steps should we take, Mr. Saperstein, can Congress use to reduce cost to broadband providers when deploying new networks?

Mr. Saperstein. So colocation has been one of the biggest benefits of the overall congressional reforms. And the reforms that have streamlined that process have paid off by expedited siting and increased wireless coverage everywhere. Making permanent the FCC's interpretations of congressional acts are probably the single most important thing that you could do.

Mr. JOYCE. So the permanency will lower cost?

Mr. Saperstein. Correct.

Mr. JOYCE. Thank you.

Mr. Romano, in some regions of our country, in particularly in rural areas like I represent in Pennsylvania, construction can only occur when the weather permits. How have long application review wait times or environmental or historic preservation reviews de-layed your ability to deploy broadband in areas where the construction period might only be 5 or 6 months out of 12?

Mr. Romano. Yes. Thank you, Congressman, for that question. Yes, the frost belt can be a real concern for people, especially as you move further north, of course, it does get quite shorter. I'm headed to Minnesota in a few days, and they've got snow on the ground there still right now. It just came down-coming down

again.

I have an example of a provider in North Dakota who waited 9 months to get through NEPA review of something that should have been categorically excluded, but just to get confirmation of that. And by the time they got that review, they had to sit because they had to wait for several months before they could start because it came right around to the November timeframe.

So, yes, Congressman, it is a significant issue. Again, having shot clocks that are more concrete and definitions that are more established will allow providers to have that predictability to deliver

sooner on that promise.

Mr. JOYCE. I think predictability is ultimate in being able to expand our broadband access. And building broadband in rural areas, we recognize, is challenging, and it's expensive. Could you describe in more detail permitting regulations at the Federal level that are impeding broadband deployment?

Mr. ROMANO. So the two that I think stick out most are the overarching sort of umbrella statutes of NEPA and National Historic Preservation Act. They're incredibly important, but there are circumstances in which—we've talked about proportionality. Really, proportionality is critical here to the application of those.

If it's in a previously disturbed right-of-way, if it's in a critical circumstance of restoration of a network, those are circumstances that really contribute greatly to the cost of deploying a network in a place where it's already been deployed before. It's simply, in

many cases, upgrading copper to fiber, for example.

So, you know, those are two of the biggest, you know, delays that we see, and in turn they result in an increase with cost for reasons that others explained on this panel. That time delay leads to inflation, and the ability to procure supplies and having to refind contractors.

Mr. JOYCE. And thank you for recognizing that those time delay recognizably increase the cost. I think that's an important takeaway message for all of us.

Thank you, Mr. Chairman, again, for this important hearing, and I yield the remainder of my time.

Mr. LATTA. Thank you. The gentleman's time has expired, and he yields back, and at this time the Chair recognizes the gentlelady

from Texas for 5 minutes.

Mrs. FLETCHER. Thank you so much, Chairman Latta. Thanks to you and Ranking Member Matsui for convening today's hearing to discuss the challenges we face in deploying next-generation communications networks throughout the country, and thanks to the witnesses for taking the time to be here and share your expertise and testimony with us today.

As we all know, broadband infrastructure is essential infrastructure. And like many of my colleagues here have already mentioned and talked about throughout this hearing, I was very proud to support the Infrastructure Investment and Jobs Act, the largest long-term investment in our country's infrastructure in nearly a cen-

tury.

As we've discussed, the bill included almost \$43 billion for the BEAD broadband expansion program. And while some of this money has already arrived for planning, the majority of it will soon be on its way to States, Territories, and Tribal Governments. And with this funding will come a flood of applications to deploy infrastructure: the towers, fibers, small cells needed to provide these broadband connections. And local offices will be strained reviewing and processing these applications.

Right now, we have a unique opportunity to capitalize on these Federal investments and to close the digital divide. And that is why I am so pleased that in our hearing today we are including my bill, the Broadband Incentives for Communities Act, which provides grants for local governments to hire and train employees, purchase software, upgrade capabilities so essential for permitting and for the effective deployment of these funds so that we can real-

ly close the digital divide.

So I want to ask just a couple questions on that note. Both Mr. Romano and Mr. Saperstein, both in your testimony and in response to Mr. Soto a little while ago, you described some of the challenges that your members have faced when obtaining authorizations and permits. That's been a theme throughout the day. Obviously, we also heard it from Representative Curtis as well.

Can you talk about how legislation like the Broadband Incentives for Communities Act would help address those challenges and pre-

vent bottlenecks at the local level?

Mr. ROMANO. Yes. Thank you, Congresswoman. Thank you for that question. Thank you for the legislation as well. I agree with

you fully.

One of the things we hear most of all is the procedures do need to be improved, and I think we support a lot of the measures here for that very reason, but we also then need to execute, and execution is going to be critical. And I think measures like yours that look at how do you make sure the offices are primed, the pump is primed for them to deliver on anything else we do in terms of streamlining permitting is going to be critical.

So systems, training, online portals, getting better staffing, training people to respond to us, that will enable better communication

that ultimately delivers on all of these other things that we're talking about.

Mrs. Fletcher. Thank you.

Mr. Saperstein?

Mr. Saperstein. Yes. Thank you for the question. I agree with Mr. Romano, and I—it sounds from our discussion that we all agree that it's critical that local governments have the resources and expertise needed to review these projects quickly so we can get these services out there. Your help in focusing on being broadband ready is greatly appreciated. And I would also add that NTIA has recently emphasized the importance of being broadband ready, and we appreciate that focus there, too, so thank you.

Mrs. Fletcher. Well, terrific, and you actually anticipated my next question, which I was actually going to direct over to Mr. Fal-

con.

But the bill does aim to address—to bring stakeholders together through NTIA to establish a local broadband advisory council so that problems with deployment can be addressed in a collaborative manner or sharing experiences and other best practices. And so it's modeled after work that we've done in my city of Houston, which has been a relator in broadband deployment, and 5G broadband deployment in particular.

So a key factor to success has been the close relationship between all of those working to get it done, between city leaders and the private sector and others. And a city's technology investments in Houston, I know, will make a huge economic impact in our re-

gion for years to come.

So, Mr. Falcon, with the time we have left, which is just a little over a minute, could you describe—you described the bill as a win/ win for communities and industry in your testimony, and I was just hoping you could take a few seconds to talk about the importance of that public-private cooperation and partnership, particularly in the confusion of the second state of the second state.

larly in the early stages of these projects.

Mr. Falcon. Certainly. Thank you for that question. You know, I think the—particularly for cities that have just as many needs in terms of the successful implementation of BEAD, the rights-of-way are crowded, and I think the need to explore alternative ways to deploy wires—you know, one of the—one of your provisions in your bill includes, you know, improving microtrenching and, you know, expanding on that.

I think microtrenching is a pretty key solution to deployment. It's cheaper to deploy. It allows new ways to reach different corridors, communities without trying to refigure out accessing crowded out rights-of-way. And I think there are even new forms of accessing city infrastructure to deploy the wires. I've heard ideas of using kind of the stormwater system which runs throughout a city, is another one that's under works today.

So these types of collaborations are key, and everyone wins if we all work together.

Mrs. Fletcher. Thank you so much.

I'm over my time, and so, Mr. Chairman, as I yield back, I would like to enter some documents for the record in support of the bill. Mr. LATTA. Without objection, so ordered.

Mrs. FLETCHER. Thank you so much, Chairman, and thank you all.

Mr. LATTA. Thank you. The gentlelady yields back. At this time, the Chair recognizes the gentleman from Texas' 14th District for 5 minutes.

Mr. WEBER. Thank you, Chairman, and thank you all for joining

us today to discuss these much-needed permitting reforms.

This Congress I'm going to be leading the Cable Transparency Act. This bill will streamline the franchising process for cable operators and franchise authorities to make it less costly and burdensome, which currently deters new entrants. The Cable Transparency Act would help close the digital divide by encouraging new cable providers to enter markets and create more competition and therefore—and thereby lower consumer costs, which we're all in favor of.

So question for you, Mr. O'Rielly. Cable providers are important players in the broadband marketplace, and I think we'd all agree and recognize that. What are some factors or barriers to entry that they face as they enter new markets or try to modify their franchises where they already operate?

Mr. O'RIELLY. So they—you have a number of franchises that are aggressive in trying to extend some of the obligations that they would like to add when they actually don't have authority to do so. And so in terms of simplifying the franchise process, I think that's very important, and the transparency is very important.

But they face—you know, poles is one of the biggest issues—

Mr. Weber. Poles?

Mr. O'RIELLY. Pole attachments. The ability to get access to the infrastructure that they're going to need to attach fiber and coax to serve the communities that are unserved today, to do the grants that they will receive and expand. So poles is a very big issue. The whole permitting process that—and the culmination of the legislation that the bills that are before the subcommittee would be very helpful, including yours especially.

Mr. Weber. Well, that's good to know. And the gentleman to your right there would be very interested in poles and the application of the system to—but I have—still have a question for you. Maybe for the panel too. What other deterrents—we really haven't discussed is access to capital, does that play in a part in any of this

procedure? You're shaking your head. Why?

Mr. ROMANO. Because the business case for rural broadband can be incredibly challenging. I mean, we're talking distances and densities that don't present a business case. It's a market failure in some areas. And so the extent to which—I've had members say before, "You give me a hundred cents on the dollar and I still wouldn't build it" to—because the operating expenses and the ability to maintain affordable rates is difficult. So that is a barrier as well.

Mr. Weber. Is workforce availability a problem? Yes, sir.

Mr. SAPERSTEIN. Yes. Thank you for the question. That's one of the things that WIA has really leaned in on is making sure that we have the next-generation technicians who are going to be out there propelling all of this infrastructure. And so we have not only our registered apprenticeship program but we're also working with

States as part of the BEAD Program to be a registered intermediary.

Mr. Weber. Are you experiencing—are we experiencing supply chain issues? We'll go to you, Mr.—is it Finkel? I can't see that far.

Mr. FINKEL. Yes, sir. Supply chain, as this Congress has talked about over the last 3 years, is a huge problem economywide. But when you're talking about \$65 billion worth of buildout with Federal dollars plus private investment plus upgrading existing infrastructure in well-served communities, I mean—and it's not just domestic, it's a global supply chain that we're competing in, so without question, supply chain is a huge challenge.

Mr. Weber. Anybody else? Mr.—is it "Falcone" or "Falcon"?

Mr. FALCON. "Falcone." Yes, you know, I would echo much of what was said here. I think the—to the question of access to capital, I think there's also a need to look at alternative means of deploying the infrastructure, treating it as—purely as an infrastructure, I think, changes some of the long-term investment strategies that are out there that BEAD has provided an opportunity for.

I think there are ways we need to think about how to share the infrastructure, particularly for 5G, in rural markets that we haven't really explored much today. But there are going to be challenges that small providers can't shoulder the burden completely

alone out there.

Mr. Weber. Were you the one that brought up microtrenching?

Mr. Falcon. Yes.

Mr. Weber. That kind of got my attention. Describe that for us,

please.

Mr. FALCON. Yes. So it's basically—the issue is a lot of the rights-of-way that exist are already crowded. They're already utilized by a number of providers or a number of other entities, and, you know, sometimes a provider just needs to, you know, run their fiber down a—you know, a handful of streets to get from one side of a community to another to connect their network, and they just need to trench through the street itself. So, you know, digging more in a shallow way, in an expedited way, allows them to connect an area of that. They wouldn't be able to by running through traditional conduit or other means you would normally do it.

Mr. WEBER. So in other words, in a yard, they put cable in your yard,—because I have cable in my yard, and they bring a little trencher out there that makes a groove and they lay that cable

down. I bet it's not 4 or 5 inches deep. Is that-

Mr. FALCON. Yes, and I think—and the challenge has been a lot of local communities are not familiar with this. One thing that California did was standardize kind of safety protocols around microtrenching and then published that to local jurisdictions, so it kind of took some of the guesswork about what's the right way to do it.

Mr. Weber. Got you.

Mr. Chairman, I appreciate the time, I yield back.

Mr. LATTA. Thank you. The gentleman yields back the balance of his time. At this time, the Chair recognizes the gentlelady from Illinois for 5 minutes.

Ms. Kelly. Thank you, Chair Latta and Ranking Member Matsui, for holding this important hearing this morning. I also want

to thank our witnesses for your testimony to help us understand how we in Congress may help reduce unnecessary barriers to

broadband deployment.

Although the last few years have been clouded with challenges like the COVID-19 pandemic and resulting in chips and supply chain shortages that hurt our economy, I was so very proud to stand with my colleagues last Congress as we passed the bipartisan Infrastructure Investment and Jobs Act, or the IIJA. Watching it get signed into law was a historic day for our country and proved that we are working on behalf of the American people to deliver real results.

Importantly, the bipartisan bill made a huge investment of 65 billion to expand broadband and help close the digital divide to ensure that every American has access to reliable high-speed internet. My district is urban, suburban, and rural, and I've seen the

problem. Urban, suburban, and rural.

Mr. Falcon, I was particularly moved by your written testimony where you said without 21st-century-ready connectivity you are not a full participant in society. As we look to expand broadband deployment, I'm very concerned still that certain communities will be left behind as they have been with other emerging technologies and advancement.

To ensure the promise of the Broadband Equity Access and Deployment BEAD Program can be fulfilled, what recommendations do you have for us as we look to ensure access is delivered to everyone?

Mr. Falcon. So thank you for that question. I think the fact that the Congress created the digital discrimination rulemaking authority to the FCC is a recognition that there always has to be oversight to ensure equitable outcomes given historically that has not happened. So rigorous enforcement of that new authority to the FCC is going to be key.

Ms. KELLY. OK. And also, what can the FCC do in its rule-making to ensure that this practice ends for good and we get rid

of this two-tiered broadband infrastructure?

Mr. FALCON. Thank you for that question. The big debate at the FCC between I would say the civil rights community and many in the consumer advocacy space with industry is when does liability

trigger from the new digital discrimination rule.

There—the civil rights community argue, and in line of many other civil rights statutes, that it should be a disparate—impact standard meaning, you know, what is the statistical information on the ground, what does the evidence show. And a number in industry are arguing it should be disparate treatment, which would raise the standard of liability to a point where you would be very difficult to actually prove.

I think that actually contradicts what Congress intended with the passage of the law because, you know, when you invest a lot of dollars in terms of BEAD, to simultaneously say, you know, ensure that all people receive the benefit. Equal access means equal

for all people.

Ms. Kelly. Also, millions of Americans, many of whom are older or lower income, have access to broadband but do not adopt broadband because they don't understand how to use it or the value it can add to their lives. To address the adoption barrier, we need to promote digital equity, which among other things focuses on providing digital literacy and skill training for people who have not been afforded an opportunity to develop these skills.

Mr. Falcon, can you speak about the challenges of broadband adoption, how we can best address these needs? And then, Commissioner O'Rielly, can you make comments if you have any?

Mr. FALCON. Thank you for that question. You know, the challenge of adoption is-there has to be a lot of training and sensitivity to that. There's a lot of Americans who really—don't really know how to use the internet fully, you know, need to be acclimated and helped, a lot in the senior citizen population, for example. And it's a—there's a value to getting everyone connected and everyone acclimated to the internet.

You know, this is something that, you know, we're not reinventing the wheel here. South Korea did something similar to advance their economy, where they're at now. They gave people free

computers and trained people how to use the internet.

Mr. O'RIELLY. If you look to reasons why people haven't adopted—why families haven't adopted, it's a long list. Affordability is one of them, and I've talked to—about that today and elsewhere. But digital literacy and the benefits and education on broadband benefits is important, and Congress has obviously made it so they can provide funding for that purpose for the first time. So there's other programs that have touched on it, but literacy and the value of it to individuals, we'll see what the result is from that.

Ms. Kelly. Thank you so much. And, Mr. Chair, I yield back.

Mr. LATTA. Thank you. The gentlelady yields back, and at this time, the Chair recognizes the gentleman from Georgia's 12th District for 5 minutes.

Mr. ALLEN. Thank you, Chair Latta, and again, thank you to our

witnesses for being with us today.

Since I was first elected to Congress, expanding rural broadband, improving cellular service in my district has been one of my top priorities, and it sounds like it's the priorities of every Member that has asked questions today. It is frustrating when it seems that no matter how many billions of dollars we appropriate towards this mission, it just gets more complicated and it's incomplete. It's almost like we can't do big things in this country anymore.

A top priority of mine last Congress was to reduce waste, fraud, and abuse by making sure that the Federal broadband maps are as accurate as our broadband mapping is in the State of Georgia. Now I'm concerned about the fees some State and local governments charge for processing applications and using space in public right-of-ways. I'm concerned that these calls will only increase the cost of deployment and make it hard to provide service to those

Mr. Saperstein and Mr. Romano, could you describe typical application fees associated with building broadband infrastructure at the State and local level, and is there a high level of variance between one State and one locality and another?

Mr. Saperstein. Well, thank you for the question. One of things that the FCC's reforms have done is help to standardize the FCC's fees and make them cost-based, and that's one of the things that we're seeking to be made permanent by Congress today is to eliminate some of those wild disparities that we used to see where fees were not cost-based.

Mr. ALLEN. OK. Thank you. Given these fees, I'm concerned that we will not be maximizing the money we dedicated for broadband deployment. This money needs to go towards building new networks, not helping local governments. This is especially true for the 42 billion that has been dedicated to the BEAD Program.

Mr. O'Rielly, why is it necessary to cap fees to State and local governments—that State and local governments charge for deploy-

ment under the BEAD Program?

Mr. O'RIELLY. So you absolutely have it right, the money should go to the buildout. We have a number of locations that need to be addressed, households that don't have service, the unserved population needs to be addressed, and that money needs to go for those, and we'll probably at the end of that still have a problem and still have a percentage. So you can't use up the dollars on other functions like permitting fees—like—or sorry, permitting applications and everything else that they're trying to overcharge the applicants.

Mr. ALLEN. Exactly. And that's why we're here today. We need

legislation to correct that.

Mr. O'Rielly, when you were on the FCC, you acted to prevent local and State governments from blanket banning the deployment of telecommunications services or facilities. From your perspective, have regions who have been unfriendly to the deployment of such facilities in the past been less responsive in processing permitting

applications in a timely manner?

Mr. O'RIELLY. Whenever there is a barrier in the past, whenever there was a problem, you saw the dollars and where the construction would go to somewhere else. The providers would shift dollars to somewhere else, and those communities would suffer, and this—you know, what's left is what we're dealing with. The population that needs attention is, you know, both in economic reasons and some because of the shifting of attention is really important.

So you highlight the issue of how receptivity is the community, how receptivity—how receptive, excuse me—is the application process, the permitting process is really important to how the dollars

will flow.

Mr. ALLEN. Well, and would you all agree that, you know, when it comes to Federal funding you're dealing with interstate commerce, so all things being equal, shouldn't it be standard, reasonable fees across the country?

Mr. O'RIELLY. I agree with that, and I've made that point a num-

ber of times, so I agree absolutely.

Mr. ALLEN. OK. Anyone else object to that?

Mr. ROMANO. No, not object at all. I was going to say to the contrary, we were part of the Broadband Deployment Advisory Council—or Committee at the FCC when then-Commissioner O'Rielly was at the FCC as well, and I think that group, there were a number of us in that group, including NTCA, who supported cost-based fees, so the actual and direct costs. And I think several of the

pieces of legislation here aim to do that at as well, and that's welcome.

Mr. ALLEN. OK. Well, you know, you have my support to provide legislation. Let's get this done and so America can do big things again.

And with that, Mr. Chairman, I yield back.

Mr. LATTA. Thank you. The gentleman yields back, and the Chair recognizes the gentlelady from California's 16th District for 5 minutes.

Ms. ESHOO. Thank you, Mr. Chairman, and for always being so specific about the number of my district.

[Laughter.]

Ms. Eshoo. It's a——

Mr. LATTA. If I could just interject, the gentlelady has informed me I was wrong one time.

Ms. Eshoo. Well, thank you, and thank you to all of the witnesses.

I served 10 wonderful years on the San Mateo County Board of Supervisors in California before I was elected to the House in 1992, and I hold a deep reverence for local government to this very day. Academicians, political leaders from both parties, industry groups, public interest groups all agree that universal high-speed internet is necessary for our country's competitiveness in the 21st century. I mean, there just isn't a question about this. This is accepted across the board.

The pandemic made this need even more evident as so many had to transition to teleworking, schools operating through distanced learning, doctor visits via telehealth. It's currently estimated that 24 million Americans lack internet access, a problem that is far more acute in rural and Tribal communities in our country. And this number is just those who lack access. Millions more simply can't even afford high-speed internet.

Last Congress, Democrats made a generational investment to bridge the digital divide and bring reliable high-speed internet to every American household. That's the goal: 82 billion—with a B—

dollars for broadband affordability, equity, deployment.

I think one of the most promising solutions to closing the digital divide that I've seen comes from local communities. That's why I started my comments out about serving in local government, county government in California. Over 900 counties, cities, local utilities, co-ops, neighborhood association, and Tribes are taking on the digital divide into their own hands by building their own broadband networks. Community broadband systems expand internet access to unserved and underserved areas and encourage competition across the country.

And here's the thing about locally owned networks: They work really well. In 2019—in a 2019 report, New America's Open Technology Institute called these networks "the fast, affordable internet option that's flying under the radar." Unfortunately, 19 States have enacted—they're protectionist laws, I mean, that's what they are, that's what they deserve to be called, that restrict and in some

cases ban community networks.

This is—I think it's wrong. You know, I mean, so many—you know, we all espouse competitiveness in our country, but there are

some outfits, when they see competition from 5,000 miles away, they go and squash it like a bug. So that's essentially what has

happened here.

So to solve this problem, I introduced the Community Broadband Act, which simply prohibits State laws that ban or restrict community broadband. There's always talk about the reverence we have for States and local governments except when it comes to legislating. So here's an opportunity I think for us to underscore that. I think every solution to bring reliable and affordable internet to Americans should be available.

Commissioner O'Rielly, thank you for the work that you've done at the FCC. We partnered on so many issues, and I think we're both legitimately proud of that. And I don't know whether you support my legislation or not, but let me ask Mr. Falcon and Mr.

Saperstein, do you support the Community Broadband Act?

Mr. FALCON. One hundred percent, absolutely. It is—if we are serious about getting——

Ms. Eshoo. Music to my ears.

Mr. FALCON. If we are serious about getting everyone connected, every—all hands have to be on deck.

Ms. Eshoo. Mm-hmm. Mr. Saperstein?

Mr. SAPERSTEIN. Yes, so as wireless infrastructure providers, we support communities providing service—well, whatever service provider wants to serve any given area.

Ms. Eshoo. And Commissioner O'Rielly, do you?

Mr. O'RIELLY. Well——

Ms. Eshoo. And if not, how do we get your support?

Mr. O'RIELLY. So I am more sympathetic on the ban side where there are limitations. And I've done a number of blogs on this topic. I've examined these issues. Things like referendums, rights of first refusal, having a budget, that was a—that's been pointed out as having a—that's an objection and a barrier and therefore should be prohibited. A State shouldn't mandate that they're—actually have to have a budget from someone who's—you know, a community that's going to, you know, offer this service.

I think that our—you know, so that's some of the States, that's some of the 19 you mentioned. There are a number, and I can't—

it used to be, you know, bigger. It's shrinking.

Ms. Eshoo. It's 19.

Mr. O'RIELLY. Yes, but I'm saying the number that actually have the ban, the straight-up ban across the board, and that's a little different in my mind. I'd explore in terms of—there are also a lot of advantages that I'd be—I'm very worried come to the local community broadband network that wouldn't be available—that are not available.

Ms. Eshoo. So you're squishy. You're squishy on it.

[Laughter.]

Mr. O'RIELLY. This issue is—yes, on this issue, I'm a little squishy.

Ms. Eshoo. Yes.

Mr. O'RIELLY. I might lean more to the—I might lean to the—Ms. Eshoo. I just want you to know how fair I am in asking you

when I know that you weren't a hundred percent—

Mr. O'RIELLY. Probably less squishy and maybe lean no category.

Ms. ESHOO. Yes, yes, exactly. Maybe we got rid of some of the squishiness.

Thank you, Mr. Chairman, and to our wonderful ranking member, Congresswoman Matsui. This is an important hearing, and I thank you for having it, and thank the witnesses.

Mr. LATTA. Well, thank you very much. The gentlelady's time has expired, and the gentlelady from Tennessee is recognized for 5 minutes.

Mrs. HARSHBARGER. Thank you, Mr. Chairman, and thank you

for the panelists that are here today.

Mr. Saperstein, in your testimony you discussed the barriers to broadband caused by lengthy Government reviews. Do you agree with me that the Government's way too big and permitting is way too slow? You can say yes.

Mr. Saperstein. Yes.

Mrs. Harshbarger. OK, good deal. Well, under the Trump administration, the FCC instituted a 60-day shot clock for making technology updates on existing cell towers. You know that it's crucial that the telecommunications industry can make any updates to existing towers for the transition to 5G for future technologies. You know, it's common sense making a technological update on existing towers shouldn't be a tremendously controversial change. I mean, is attaching the equipment to a pole that difficult, or it's just the permitting, am I correct?

Mr. Saperstein. That's correct.

Mrs. Harshbarger. OK. I'm leading the 5G Upgrade Act, which would codify this shot clock, so if a State or a local government takes too long approving a permit for adjusting technology on an existing tower, it's automatically approved. And I guess my question to you is, why is that important that the shot clock be codified as law?

Mr. Saperstein. Thank you for the question and for your support of the 5G Upgrade Act. Many of the reforms that were made recently in the FCC's 5G upgrade order are currently under appeal, and we don't know how those are going to turn out. So being—making sure that those are codified is essential so we can have commonsense reform so colocations can have the streamline reviews, we can get 5G upgraded quickly everywhere.

views, we can get 5G upgraded quickly everywhere.

Mrs. Harshbarger. Yes, I have a rural district in East Tennessee, and it's imperative—you know, there's so many things that we can do if we have that, so, you know, broadband and everything else. So there's much to do, but dragging our feet is not the answer, so I think—I appreciate your agreement with me that the Government's tee hig and the permitting's tee slow.

ment's too big and the permitting's too slow.

And with that, Mr. Chairman, I yield back.

Mr. LATTA. Well, thank you. The gentlelady yields back, and the Chair recognizes the gentleman from Texas' 11th District for 5 minutes.

Mr. PFLUGER. Thank you, Mr. Chairman.

And, you know, I appreciate the leadership that Chair Rodgers has shown on this, and I love the discussion on permitting reform, whether it's energy, or telecommunications, broadband, electricity, it doesn't really matter. You know, this is a commitment that we made to the American public to deliver at the speed of relevancy,

and I think we're currently, you know, being inhibited in a lot of areas by government delays, inaction, and otherwise, so I appreciate the conversation.

I just want to start with that because I think if we don't pay attention to that, inevitably we're going to lose. We've had this same discussion on satellites in this committee, and spectrum, and we're going to lose to China if we don't continue to move at the speed of relevancy.

So, Commissioner O'Rielly, I'd kind of like to start by talking about, you know, the difficulty to track permitting applications

once it's submitted to a Federal agency.

Mr. O'RIELLY. So depending on the agency, my experience is that different agencies are more receptive and more capable of handling the process and being favorable to the—excuse me, apology for that, I'm the—responsible for my kids, so anytime—

Mr. PFLUGER. We understand.

Mr. O'RIELLY. Anytime the local school calls I'm—so, yes, so the application process and the actually approval process is extremely tough to follow, and the providers can highlight how it gets lost in the shuffle and then go—years can go before the action is actually taken, much less know what's happening. And the Commission itself, as a former Commissioner, we wouldn't be able to see any of that, you know, from other agencies. Ourselves, in the activity that we did, you know, was to move forward on all the balls that your colleague highlighted and really push the envelope as far as we could.

Mr. PFLUGER. Mr. Romano or any others on the panel, your

thoughts on how difficult it is to track?

Mr. ROMANO. Thank you for the question. Yes, I would agree, and I'll give you an example. I was talking to a member in Michigan just last night who applied for a permit in August of 2022. Despite repeated inquiries, couldn't get word back on where that stood until December of 2022, which then put their shot clock starting then, which pushed them into August of 2023 for their 270 days, which then becomes a problem because of frozen ground in Michigan when they want to start construction.

So having greater transparency, greater responsiveness, greater levels of communication is going to be critically important. There are a lot of dedicated people working on these permitting issues, but having systems and processes in place to provide greater trans-

parency will be critical.

Mr. Pfluger. Well, thank you for that. That—I'm proud to introduce the—you know, a bill that will have a tracking mechanism, you know, to have the deployment tracking—to understand what the facts are to better communicate between government and industry. You know, in a rural area like I represent in West Texas, you know, look, there's billions of dollars that have been spent on this, and we want to see the results. We want to see connectivity.

And I'm just interested—Mr. Finkel, I'm interested in your thoughts on this. Is there a—an intentional delay towards rural

areas?

Mr. FINKEL. Well, look, I don't—I'm not sure that there's an intentional delay, but I think that by nature a lot of these agencies just move real slow, they add a level of redundancy. There's agen-

cies that are duplicative, that are tripping over each other when

they're doing reviews.

And one of the things that I—that was in my testimony was that, you know, working across 48 States, our members, when we get aggregated stories from them, you'll have different field offices for different agencies which have totally different and completely different approaches, different timelines. So they're all moving through the process at a different pace, so even when you get that transparency, you're going to see a great degree of discrepancy between the different offices within the same agency.

Mr. PFLUGER. Well, I'm not a conspiracy theorist here, and I don't want to inject things that may not be happening, but I think it's clear that the inefficiencies, whether it's intentional or not, or the lack of tracking, whether it's intentional or not, you know, OK, let's fix the problem now, and let's deploy broadband into areas

that need it.

And for our area, this is energy. This is, you know, the energy capitol of America, it's agriculture, it's the men and women who work in those industries. It's a safety issue, and as I mentioned earlier, I think that this is a national security issue with regards to competing with China every single day because they're doing this, and they're deploying it, and we need to get our act together.

So thank you all for testifying and for your thoughts today, and

I appreciate your professional expertise here.

I vield back.

Mr. LATTA. Thank you. The gentleman yields back, and the Chair now recognizes the gentleman from Ohio's 12th District for 5 minutes.

Mr. BALDERSON. Thank you much, Mr. Chairman, and thank you

to the panel for being here.

Too many people in my district and across Ohio—as I have three Ohioans here so they can all speak for the same, and often—too often the buildout of new networks can be delayed or even sidelined completely due to lengthy applications for franchising or permitting zoning problems, issues with access to poles, and more. Congress needs to do something. The bills being discussed here today would do just that, and I applaud the chairman for hosting this committee.

My bill, the Cable Leadership Act, puts a shot clock on franchising authorities to grant or deny franchise to providers. This is the only one of the many applications that need to be submitted and approved before providers can start building out new broadband networks.

Mr. Romano, I know that you don't represent cable companies so you can't give input on that specific bill, but could you give some great examples in your testimony about how your members' projects have been delayed? What tools, such as a shot clock, can Congress employe to streamline the approval process and prevent such delays?

Mr. ROMANO. Thank you, Congressman, for that. And, in fact, it's interesting, we do have a handful of cable companies within our membership, so it—there is some relevance there as well directly

too.

Yes, I think the biggest things we see with—and I think where these bills would help tremendously is certainty. Providing definitional certainty, knowing what it means for something to be complete, what it means for something to be received. Providing greater certainty and transparency into the process. The communicatelack of communication, as I mentioned earlier, is a real concern. The inability to see and predict what's going to be coming next.

Our members are small companies. A lot of cable companies are small cable companies as well. Their ability to hire construction crews depends upon knowing when they're going to be able to hit the ground running, and if they don't have that, they can't line that up, which complicates both the cost and the timing of keeping

those crews busy.

So all of those things are significant hurdles, and I think the measures before this committee would help to alleviate those, if not address them completely.

Mr. BALDERSON. All right, thank you. Sorry. Thank you.

And, Mr. Romano, I'm going to include you on this next question too, but also Michael Saperstein. I'm curious, where most of these delays occurs. As I've mentioned, various applications and approvals are needed from all levels of government before a provider can start building out a new network. Are your members—both of you, are your members seeing these delays occur more often at the Federal level, or State and local level?

Mr. Romano. I think just by nature of the areas they serve, it tends to be more of a Federal issue because, especially as you get out west, our members are serving a lot of Federal lands for service BLM and the like. But State highways can be an issue as well, and I would be remiss if I did not mention railroads. Railroads are a significant issue in rural areas in terms of crossing.

So I have examples in my testimony of people going 15 feet and paying significant sums for that. So—but it is—tends to be more of a Federal end issue, but then that does bring in State historical preservation offices at times for some of those Federal reviews,

which again, is why these measures are so important.

Mr. Balderson. Thank you.

Mr. SAPERSTEIN. Yes. And thank you for the question. I would agree, due to congressional and FCC action, that most of the delays we're seeing now is on the Federal level. One thing I wanted to highlight is that one of the big challenges we're seeing now is that the FAA actually has to approve certain towers that are over a certain height, use certain frequencies, or in a certain proximity to airports. What was taking 3 weeks about a year ago is now taking 9 months to a year. And so we are looking to—for Federal guidance to—I believe it's a resource issue—how we can get that better resourced so we don't delay 5G rollout.

Mr. BALDERSON. Thank you.

My last question is for Mr. O'Rielly. I can hardly see, but I see you through the thing here. VOICE. I'm with you.

Mr. BALDERSON. Anyway, in your—and I—you know, I've been in and out and—as you're well aware of, but in your testimony, you talked about the FCC—which I did read—and needed to take it upon ourself to alleviate barriers to broadband deployment, often pushing its statutory boundaries. Do you feel that the FCC should be granted more latitude to tackle barriers to deployment as they come up, and if so, in what areas? And you have 50 seconds.

Mr. O'RIELLY. So I agree with the package of legislation, and there's probably some things I would do to make them stronger. I want—I would believe the committee and the subcommittee should always limit and structure what the FCC—what you ask out of the FCC. But in terms of aggressiveness and the need to act, I think

the FCC can be very helpful in this case.

It certainly needs to be talked about, poles. I think the FCC can address all the poles nationwide. Don't have to have the exemption for certain municipal or nonutilities or co-ops. So I think that the Commission can handle those things and can handle other authority. They've done a very good job, I think, in this universe, and if you give them direction and limitations, they will follow closely. If you give them broad authority, then you run into some issues sometimes.

Mr. Balderson. Thank you all very much.

Mr. Chairman, I yield back.

Mr. LATTA. Thank you. The gentleman yields back, and the Chair now recognizes the gentlelady from Florida's Third District for 5 minutes.

Mrs. CAMMACK. Awesome. Well, thank you, Chairman Latta, for

hosting this important hearing today.

Thank you to our witnesses for appearing. I see you all have been bunched up real tight this entire hearing. I've been noticing the elbow room as I've been dipping in and out of the room, so we are near the end. Hang in there.

This is such an important topic. I know we have chatted about this and how we can do this in a way that is efficient, responsible, and hits the mark. And every single person who serves today has a district that is impacted by broadband or lack thereof, and so I'm excited that we're starting to really address some of these issues.

All of our witnesses here today I'm sure share the concerns of the process for permitting is too complicated, opaque, time consuming. I heard a little bit about some of the delays that we're having.

In your view, what is the single most urgent change needed to the permitting process in order to best deploy broadband across the country, especially in rural areas like Florida? And I would like to address this question to each of you, and we'll start down here and work our way down.

Mr. O'RIELLY. So pole attachments, both access and rates, and I actually wrote a letter a number of years ago to the State House in Florida because they were looking to simplify that process there.

Mrs. CAMMACK. I'm shocked by your answer. That's my joke for the day.

[Laughter.]

Mrs. Cammack. Mr. Finkel.

Mr. FINKEL. Expediting the process on existing right-of-ways on existing poles to make sure that you don't have to go through an EIS for—to put wire on existing infrastructure.

Mrs. CAMMACK. OK.

Mr. Falcon. I think increasing the personnel resources available given the surge of projects that are coming in is key to shorten the review time.

Mrs. CAMMACK. So at the agency level?

Mr. FALCON. Yes.

Mrs. Cammack. OK.

Mr. Saperstein. Thank you for the question. For Federal lands, it's adding clarity, accountability, and transparency to that process, in addition to looking at what more resources can be given to FAA to avoid a bottleneck there.

Mrs. Cammack. OK.

Mr. ROMANO. And thank you, again, Congresswoman, for the question. So, yes, I think it's-to echo some of the others, dealing with reviews for previously disturbed rights-of-way and previously disturbed earth, those—the ability to upgrade networks quickly where especially we've already got networks in place is going to be

critical to delivering on next-generation capabilities and capacity.

Mrs. CAMMACK. Excellent. Thank you, as we're considering a number of bills that are working to address some of these more nuanced issues. Myself, in particular, I'm really glad to lead the discussion draft for the Digital Applications Act, which would establish an online portal to accept, process, and dispose of the common form application to deploy a communications facility on Federal property.

Mr. Finkel, can you discuss the current challenges with the common form application SF299 and how an online portal for permitting applications would benefit broadband deployment on Federal property?

Mr. Finkel. It's just common sense. Mrs. Cammack. Thank you. You know. And common sense is not common around here.

Mr. FINKEL. I don't need to add much more.

Mrs. Cammack. You mentioned Federal property?

Mr. Saperstein. Yes, and thanks for the question. Actually, portals are one of the things we-our members have talked about that's a simple fix that would add so much transparency into what's going on and allow more predictability in the overall build

Mrs. CAMMACK. Just going down the line, legislation like this to basically modernize the process and make it more transparent, you would fully support, and it would be silly for anyone to oppose this legislation, correct?

Mr. Romano. Yes.

Mrs. Cammack. Just go-we'll start down here.

Mr. Romano. Gaps in—yes, gaps in communication are incredibly frustrating. At a time when we can track so many things in our daily lives online and check with—on the status of different things from airline flights to train schedules, it is difficult to understand why we cannot keep track of these significant investments in our future. Yes.

Mrs. Cammack. Excellent.

Mr. Saperstein. I think Mr. Romano said that well.

Mrs. Cammack. Mr. Falcon.

Mr. Falcon. Yes. No, I would agree, and I think the coordination amongst if there's several agencies involved is also key. Some sort of single point of contact may be a way to augment the value of a portal.

Mrs. Cammack. Excellent.

Mr. FINKEL. And the portal, again, makes it so all agencies can see it. It creates transparency for the applicant. You have a clear picture of what your process is.

Mr. O'RIELLY. I actually—

Mrs. CAMMACK. If you say—if you don't say ditto, I'm going to

be disappointed.

Mr. O'RIELLY. Ditto. I support—I agree with the legislation. I may not use the word silly, only to—but I—I'm hard pressed to come up with a reason to oppose it.

Mrs. CAMMACK. Excellent. Well, thank you guys for making the

case for that wonderful piece of legislation.

What expected risks and challenges in the absence of permitting reform, considering the massive amount of Federal dollars dedicated to broadband deployment, do we face over the next few years? Just—we've got 30 seconds. Give me your number-one concern if we don't act. And we'll go down the line.

Mr. O'RIELLY. I'm worried about overbuilding, and I'm worried about waste, fraud, and abuse.

Mrs. CAMMACK. OK.

Mr. FINKEL. I'm worried the money won't get out.

Mrs. Cammack. Ooh.

Mr. FALCON. I'd be worried about costs rising and minimizing the impact of the dollars invested.

Mr. SAPERSTEIN. Yes, simply that we would fail our objective of

universal connectivity.

Mr. ROMANO. A crush of applications leading to chaos and trying to sort through them all to get them done.

Mrs. Cammack. Excellent.

With 2 seconds to spare, Mr. Chairman, my time has expired. Thank you to our witnesses for appearing before us today, and with that I yield back.

Mr. LATTA. Thank you. The gentlelady yields back, and the Chair

now recognizes the gentleman from Idaho for 5 minutes.

Mr. FULCHER. Thank you, Mr. Chairman, and for those on the

panel willing to take the time and provide some input to us.

We all want rural broadband, and the permitting process, as we've had many discussions on, sometimes slows things down and makes it tough. In the State of Idaho, we have a tremendous amount of Federal land, nearly two-thirds of land mass there. And in my State, rural carriers and utilities struggle to get approvals to lay fiber lines, set up towers, construct buildings and other infrastructure to ensure residents that are physically located in regions surrounded by Federal lands, or in other words kind of land-locked that way, so they can get the same access and quality broadband as those in urban areas.

And so by streamlining the Federal side of the permitting, then that gives the access and the quality for broadband to those in rural areas and just makes it that much more achievable. So one of the bills that I am introducing is—it's called the Reducing Bar-

riers to Broadband on Federal Lands Act, and this bill would remove the requirement to do a NEPA review for the deployment of broadband projects that are on previously disturbed land. And that previously disturbed, basically to summarize, means there's already been a NEPA process for other purposes.

And so otherwise, these projects end up just not making it through the planning stage, and there's multiple examples right in

my backyard where that's been the case.

So, Mr. Chair, there is a report that I'd like to enter into the record. It's from the National Telecom and Information Administration. They published a report that provides recommendations on how Federal agencies can improve or streamline their processes for reviewing broadband installation applications, and I would ask unanimous consent to enter that report into the record, please.

Mr. Latta. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. FULCHER. Thank you, Mr. Chairman.

And basically my questions and my requests for interaction from you all is, first of all, do you see specific problems—and I'll start with Mr. Romano and then Mr. Saperstein and Mr. Finkel. Do you see problems with that when we're looking to streamline by foregoing NEPA again when it comes to permitting for rural broadband? Mr. Romano.

Mr. ROMANO. Thank you, Congressman, for the question, and thank you for the discussion draft you put forward—the bill you've

put forward.

We support that bill. We think that it makes a ton of sense. The landlocked point you raise is a really good one, an interesting one, and I think it's one of these pieces that's hard to capture sometimes. But the puzzle pieces of putting together when you're going across Federal land, and then you're in a private right-of-way, then you're going across a railroad, that can make it incredibly hard, especially for a smaller provider.

So I think a bill like yours offers an opportunity to help put the puzzle pieces together better. I don't think when you're talking about previously disturbed earth, previously disturbed rights-of-way, you're talking about upgrading existing networks, that hopefully is a proportional response that allows you to make sure that you're not presenting the kinds of concerns that would rise to a higher level of scrutiny or need a higher level of scrutiny with respect to environmental or historical preservation issues.

So I think this bill makes a lot of sense. It's a good use of finding a way to make sure it's not considered a major Federal action or

an undertaking under those statutes.

Mr. Fulcher. Thank you for that.

Mr. Saperstein?

Mr. SAPERSTEIN. Yes, and thank you for the question. So our view is that permitting processes should be predictable, proportionate, and timely, and I think your bill speaks specifically to the proportionality. In the types of circumstances that you're describing, do we really need the types of NEPA views—NEPA reviews, or are we better off exempting them? And I think your bill goes a long towards that.

Mr. Fulcher. Thank you for that.

Mr. Finkel?

Mr. FINKEL. As I shared with the Chair earlier, the idea that you'd have to Greenfield existing right-of-way that you've already and existing infrastructure that's already been through the NEPA process just seems totally redundant and a waste of both time and Federal resources.

Mr. Fulcher. Thank you.

Mr. O'Rielly?

Mr. O'RIELLY. I support your legislation. I think it's the direction to go, and the requirement is unnecessary in my mind.

Mr. Fulcher. Great.

We'll ask Mr. Falcon too.

Mr. FALCON. Thank you. I—you know to the extent that many of the projects are transitioning legacy infrastructure to kind of 21st century infrastructure in previously disturbed ground, I think there is—it is right to think about how do you distinguish that from actual Greenfield projects.

Mr. Fulcher. Thank you for that.

Mr. Chairman, I'm going to have 20 seconds to spare. I yield back.

Mr. LATTA. Thank you. The gentleman yields back the balance of his time, and the Chair now recognizes the gentleman from California's 23d District for 5 minutes.

Mr. OBERNOLTE. Well, thank you very much, Mr. Chairman.

I represent an extremely rural district, and the problems that my constituents have in accessing broadband are exacerbated by the fact that over 90 percent of the land mass of my district is in public ownership in one form or another. So it's not enough to merely allocate grant funding to be able to create broadband infrastructure in these rural areas, then we'll have to manage this process of getting that infrastructure built through the privately held—the publicly held land that separates the communications hubs from the places where my constituents live. I know that you're very familiar with that particular problem.

So one of the bills that we are discussing today is my bill, the GRANTED Act, which aims to solve in some small part that problem. Congress has already directed the FCC to expedite the processing of those permits required to cross Federal lands either through lands held by the BLM or sometimes the Department of Agriculture. We've directed a common application for those permits, and we have put a shot clock of 270 days on the approval of

those permits.

Unfortunately, what we are experiencing is that in many occurrences the Federal agencies involved take more than 270 days to process those permits, and unfortunately, there are no penalties or consequences for them doing that. So my bill would deem approval for any application for broadband infrastructure across public lands that has been pending for more than 270 days, provided that application was full and complete when it was submitted. And I think that's a commonsense way of solving that problem.

I'd be interested in your opinion on that concept. Are you a supporter of that kind of deemed approval after 270 days as a—let's start with the end of the table here, Mr. Romano.

Mr. ROMANO. Yes, Congressman, thank you for the question. Yes, we do. We think that that makes a lot of sense. And I think what this highlights too—one of the things I want to be clear about as well is a lot of the bills that are being presented here refer back to 6409, the section which is a wireless facilities deployment.

So one of the things—one of the other bills that's present in this proceeding would attempt to stitch this together and make sure those also apply to wireline, and I think that's going to be critical. I think a lot of the concepts here that are presented make a ton of sense and would help to expedite deployment. I think it's going to be critical as well to make sure those dots connect to make sure they apply to wireless and wireline—

Mr. OBERNOLTE. Sure.

Mr. ROMANO [continuing]. Facility deployment alike to the extent appropriate.

Mr. OBERNOLTE. That's a good point.

Mr. Saperstein?

Mr. SAPERSTEIN. Yes, thank you for the question. And yes, we support your bill, and we believe it would help adding accountability to the Federal land process because currently, though Congress has set this 270-day shot clock, there is no accountability and there is no recourse if they fail to meet it.

Mr. OBERNOLTE. Right. I hope so too.

Mr. Falcon?

Mr. FALCON. Thank you for that question. I think the—if the staffing personnel is made available, permits can be turned over faster. And a common issue I hear, particularly in California with rural carriers, is there's just not that many people there for reviewing permits. So, you know, I think it's a fixable problem that can bring it down to that number you're shooting for in terms of 270 days.

Mr. OBERNOLTE. Mr. Finkel?

Mr. FINKEL. I'll associate myself with the comments of Mr. Romano on both—including wireless and wireline. But let me also—you noted and you used "full and complete application," and that's when the shot clock would end. So just one thing to consider is oftentimes with agencies that have that—have the time limitations, how they define "full and complete" and whether or not they restart the shot clock because they deem you to not have been full and complete, and how they communicate and how—whether or not they're transparent about the full and complete is a really important factor to consider as well.

Mr. OBERNOLTE. Yes. I actually think that's an excellent point. We've tried to be very thoughtful and deliberate with our approach to that problem in the text of the bill, but we are certainly open to any suggestions that you might have to differentiate perhaps between the shot clock for declaring an application complete and the 270 days required to review it, because what we don't want is to get to the end of 200—you know, Day 269 and have an agency come back and say, oh, you know what, you include—you failed to include this piece of paper, we're starting over, you know, at Day Zero.

Mr. O'Rielly?

Mr. O'RIELLY. Yes, I've got experience with that at the FCC. But to your point, I actually very much support your legislation. I think

you're maybe being a little generous on 270 days.

Mr. OBERNOLTE. Well, we'll have to think about that. Well, I thank you very much, and we'll continue to work with you as we work through the legislative process with this bill, but I think we're all unified in our desire to increase this access to rural—access to broadband infrastructure and solve some of these systemic problems.

I yield back.

Mr. LATTA. Thank you. The gentleman yields back the balance of his time, and at this time the Chair recognizes the gentleman from Objects Sixth District for 5 minutes.

from Ohio's Sixth District for 5 minutes.

Mr. Johnson. Thank you, Mr. Chairman. I'm really proud to once again this session be sponsoring the Wireless Broadband Competition and Efficient Deployment Act that would remove the requirement for environmental and historic preservation reviews in order to add or upgrade wireless facilities on existing infrastructure.

This is common sense, and it would eliminate a tremendous burden with reviews that are often repetitive and that unnecessarily slow down broadband expansion. And I want to thank Chairman Latta for including my discussion draft in today's legislative hearing, and thank you to our witnesses for your insight. We really have to break down the barriers to deployment that are keeping folks like those I represent in rural Appalachia on the wrong side of the digital divide.

Commissioner O'Rielly, you and I have worked together on this for a long time. It's so frustrating to me that here in 2023 we're talking about the same problems that we were talking about in January of 2011. We're just not making progress on rural broadband, and this is a commonsense thing that can really make

a difference.

Mr. Romano, your testimony discussed the difficulties and lengthy delays your members have experienced when obtaining permissions through environmental and historic preservation and consultation processes for broadband deployment. How often do you have to perform an environmental or historic preservation review for simply adding or upgrading wireless facilities on existing infrastructure?

Mr. ROMANO. So the way the NEPA and HPA work essentially is, if we are deploying on Federal lands or essentially using Federal funds, those are going to trigger the kinds of—

Mr. JOHNSON. So anytime the Federal Government's involved,

you have to do all that.

Mr. ROMANO. That essentially is correct. I mean, there may be—there are categorical exclusions under NEPA that can apply that can take one out of that, but oftentimes they can't even take time to figure out whether one qualifies for a categorical exclusion and the number of the projects.

Mr. JOHNSON. Got you. In your view, does the amount of time, effort, and cost for these reviews detract from the incentive for providers to upgrade existing wireless infrastructure, and what does

this mean for consumers?

Mr. Romano. I think the—and I'll pick up a point that Mr. Saperstein made earlier about the sort of transparency and the predictability of this. The inability to know for certain what—how long this is going to take, what exactly is going to be required can be a deterrent to participation in some of these programs or otherwise to invest in these areas. I will say the incentive to invest—our members are based in the communities they serve, so they've got strong incentive to do it anyways. But particularly, participating in expansion programs, that can be a real deterrent.

Mr. JOHNSON. Got you.

Mr. Saperstein, same question: In your view, does the amount of time, effort, and cost for these reviews detract from the incentive

for providers to upgrade existing infrastructure?

Mr. Saperstein. Yes, absolutely. I mean, colocation is one of the most efficient things we can do as a society to spread wireless deployments. It makes use of existing infrastructure, it allows multiple carriers to serve an existing area, and it reduces the overall effect on the local community. So absolutely.

Mr. Johnson. OK.

Mr. O'Rielly? And again, it's good to see you. The last time I think I saw you maybe when you came out to see some of the rural aspects of my district and the struggles that we have there with broadband. In your testimony, you mentioned the importance of permitting reform for wireless connectivity, including for 6G. Can you expand on what reforms will be helpful for future 6G deployment?

Mr. O'RIELLY. So 6G is expected—and it's still early in the discussion stage, but it's expected to use higher frequency, so both midbands and super-high bands, and in doing that, you're going to have more towers, more infrastructure that's absolutely necessary. And so that means more colocation, that means more placement of towers, it means new construction of big towers and small cells and antennas, and all of that's going to need approval, and all of that's going to go through the molasses that we've been talking about today.

Mr. JOHNSON. OK. Are there any particular reforms you would recommend to increase the efficiency of current 5G deployment?

Mr. O'RIELLY. Well, I—permitting is at the top of my list. Permitting and pole attachment, both the rates and access are at the top of my list. I've talked about other aspects that the committee can focus on. I—we talked about railroads briefly. I'd put railroads in that category as well.

Mr. JOHNSON. You know, we used to have an anti-drug campaign in America that the big byline was "Just Say No." God, we need the Federal Government to just say yes to some of these things that are common sense. It—this is mind-boggling to me.

Mr. Chairman, thanks again, I appreciate you letting me waive

on the committee. Thank you.

Mr. LATTA. Well, thank you very much. And seeing no other Members wishing to ask questions, I want to thank our panel of witnesses today for your expertise and your time today. We greatly appreciate it. You can tell from the interest of the Members that this is a very, very important topic that we're dealing with.

I ask unanimous consent to insert in the record the documents included on the staff hearing documents list.

Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. Latta. I remind Members that they have 10 business days to submit questions for the record, and I ask the witnesses to respond to the questions quickly. Members should submit their questions by the close of business on May the 3rd.

And without objection, the subcommittee is adjourned.

[Whereupon, at 1:30 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

04.19.23 Staff Documents for the Record

Majority

- 1. A memorandum for the heads of executive departments and agencies from March 6, 2023
- 2. A letter from the President and CEO of the Fiber Broadband Association on April 19, 2023
- 3. A letter from the US Chamber of Commerce on April 18, 2023
- 4. Report on the status and implementation of Mobile Act Now
- 5. State of New Jersey Bill on small wireless facility deployment
- 6. A letter to Committee leadership from APPA, NRECA, and UTC from April 18, 2023
- 7. A letter from Connect the Future on 4.19.23

Minority

- 8. A letter from local government organizations to Chairman Latta, Vice Chairman Carter, and Ranking Member Matsui from April 19, 2023
- 9. A letter from Members of Congress to Secretary Buttigieg, Assistant Secretary Davidson, and Secretary Granholm from August 5, 2022 (from Rep. Matsui)
- 10. A letter from NATE to Lizzie Fletcher on April 14, 2023
- 11. A statement from INCOMPAS CEO Chip Pickering on Lizzie Fletcher's Broadband Incentives for Communities Act
- 12. CCA Statement on Congresswoman Fletcher's Reintroduction of Legislation to Help Communities Expand Broadband Infrastructure







March 6, 2023

M-23-14

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Shalanda D. Young

Director

Office of Management and Budget

Brenda Mallory

Chair

Council on Environmental Quality

Christine Harada Executive Director

Federal Permitting Improvement Steering Council

SUBJECT: Implementation Guidance for the Biden-Harris Permitting Action Plan

The Biden-Harris Permitting Action Plan¹ (Action Plan) outlines the Administration's strategies to strengthen and accelerate Federal environmental review and permitting,² and ensure the timely and sound delivery of much-needed upgrades to America's infrastructure. The Action Plan states that Federal environmental reviews and permitting processes will be effective, efficient, and transparent, guided by the best available science to promote positive environmental and community outcomes, and shaped by early and meaningful public engagement. The Action Plan leverages the permitting provisions provided in the Infrastructure Investment and Jobs Act (referred to as the Bipartisan Infrastructure Law) and the Creating Helpful Incentives to Produce Semiconductors and Science Act, the important resources provided in the Inflation Reduction Act, and regular agency appropriations as well as interagency coordination and collaboration efforts

The Action Plan includes the Office of Management and Budget (OMB), in consultation with the Council on Environmental Quality (CEQ), providing guidance to agencies on carrying out Action Plan initiatives.³ The Action Plan additionally includes the Federal Permitting

1

¹ The Biden-Harris Permitting Action Plan to Rebuild America's Infrastructure, Accelerate the Clean Energy Transition, Revitalize Communities, and Create Jobs (Action Plan) (May 11, 2022), https://www.ubiticharge.gov/up.content/upleade/2022/05/Piden Harris Permitting Action Plan add

https://www.whitehouse.gov/wp-content/uploads/2022/05/Biden-Harris-Permitting-Action-Plan.pdf.

² "Federal environmental review and permitting" throughout this guidance includes environmental review pursuant to the National Environmental Policy Act and authorizations, licenses, permits, approvals, funding, administrative decisions, and interagency consultations required under Federal laws They include, at a minimum, those identified in the Federal Environmental Review and Authorization Inventory,

 $[\]underline{https://www.permits.performance.gov/tools/federal-environmental-review-and-authorization-inventory}.\\$

Action Plan at 2.

Improvement Steering Council (Permitting Council) Executive Director, OMB, and CEQ providing guidance to agencies on which infrastructure projects should be added to the Federal Permitting Dashboard in the interest of transparency. ⁴ This memorandum provides implementation guidance to agencies on carrying out the initiatives of the Action Plan, and the Appendix to this memorandum provides guidance to agencies and the sector-specific teams on which infrastructure projects should be recommended to the Executive Director to consider for addition to the Federal Permitting Dashboard in the interest of transparency.

Section 1. Accelerating Smart Permitting through Early Cross-Agency Coordination

1.1 What is the Federal Permitting Improvement Steering Council's role in implementing the Action Plan?

Established in 2015 by Title 41 of the Fixing America's Surface Transportation Act (FAST-41). the Permitting Council is composed of the Executive Director, who is the Permitting Council Chair, 13 Federal agency council members, the CEQ Chair, and the OMB Director. ⁵ The Permitting Council, in cooperation with the National Economic Council, the White House Climate Policy Office, the White House Infrastructure Implementation Team, and the White House Clean Energy Innovation and Implementation Team, will serve as the primary center for permitting excellence to improve coordination among agencies, facilitate sound and efficient permitting, and help resolve issues consistent with climate, economic, and equity goals. Under the Permitting Action Plan, the Permitting Council will serve as the primary interagency body to facilitate cross-cutting Federal permitting issues and opportunities across all types of infrastructure projects, not only FAST-41 "covered projects." The Permitting Council should use its convening function to: (1) discuss strategies to foster early and improved interagency coordination on infrastructure project review and permitting; (2) provide advanced training, enhanced support for agency project managers, and avenues for sharing lessons learned to improve infrastructure-related environmental review and permitting; and (3) identify and help address pressing environmental review and permitting issues, including potential schedule delays, bottlenecks, capacity and resource limitations, process challenges, and conflicts.

The Executive Director, CEQ and OMB will lead discussions and facilitate information exchange among relevant Permitting Council member agencies. In addition, to the extent authorized by law, the Permitting Council will work with agencies and sponsors of infrastructure projects to identify and resolve key issues that cause project review delays, bottlenecks, redundancies, and inefficiencies. The Permitting Council will develop expedited contracting mechanisms and other tools to assist Federal agencies and affected stakeholders in identifying and obtaining the resources necessary to improve and accelerate the environmental review and permitting process for infrastructure in the United States. The Executive Director will provide

⁴ Id. at 5; 42 U.S.C. § 4370m-2(b)(2)(a)(iii).

⁵ The 13 Federal agency Permitting Council members include designees of the Secretaries of Agriculture, Army, Commerce, the Interior, Energy, Transportation, Defense, Homeland Security, and Housing and Urban Development, the Administrator of the Environmental Protection Agency, and the Chairs of the Federal Energy Regulatory Commission, Nuclear Regulatory Commission, and the Advisory Council on Historic Preservation. 42 U.S.C. § 4170m-1(b)(2)(B).

progress reports on Permitting Council efforts in the report that the Executive Director submits to Congress each ${\rm April.}^6$

1.2 What is the role of the sector-specific teams?

The Administration has convened sector-specific teams of experts that are advancing the responsible build-out and modernization of U.S. infrastructure by facilitating interagency coordination on siting, permitting, supply chain, and related issues for offshore wind energy and transmission, onshore renewable energy and transmission, broadband, production and processing of critical minerals, and transportation.

Sector-specific teams should identify for the Permitting Council:

- General permitting issues—whether related to personnel, budget, processes, administration, or legislative considerations, policies, or otherwise—that should be addressed to reduce bottlenecks and facilitate the successful and timely review of permit applications for projects in their respective sectors;
- Large, complex, or significant⁷ projects in their respective sectors to be considered for addition to the Federal Permitting Dashboard (Dashboard) pursuant to the Executive Director's authority to add projects to the Dashboard in the interests of transparency;⁸
- Strategies to address disputes or complicated issues, including opportunities to prepare new programmatic analyses and approaches; and
- Any other pertinent issues as determined by the teams.

1.3 The Action Plan directs sector-specific teams to identify and provide regular updates to the Permitting Council on the status of large, complex, or significant projects. What factors should sector-specific teams consider when identifying these projects?

Sector-specific teams are responsible for identifying large, complex, or significant infrastructure projects that may warrant the attention of senior agency officials and the Permitting Council to facilitate the completion of environmental review and permitting. Agency staff participating in sector-specific teams should coordinate with other senior agency officials to determine which projects would benefit from this additional attention and transparency. When determining which projects to identify, sector-specific teams should consider a project's:

- Size, including the total investment and cost, geographic scope, and magnitude in comparison to other projects within the sector or within agency portfolios;
- Complexity, including whether the project will require the development of an
 environmental impact statement or environmental assessment that involve multiple
 agencies or raise complex issues under relevant statutes, multiple authorizations by

⁶ See 42 U.S.C. § 4370m-7(a)(1)(A).

⁷ Identifying a project as "significant" for this purpose is not a factual or legal determination that the proposed major Federal action(s) may have significant effects on the quality of the human environment under the National Environmental Policy Act (NEPA).

^{8 42} U.S.C. § 4370m-2(b) (2) (A) (iii).

- Federal agencies to proceed with the project, or will involve new technology, materials, or other unique characteristics; and
- Significance or importance, including the project's economic impact and potential to
 address, either alone or in combination with other projects, the Administration's goals,
 such as rebuilding the country's infrastructure, reducing greenhouse gas emissions and
 addressing the climate crisis, revitalizing communities, creating well-paying, union jobs,
 achieving environmental justice, building climate resiliency, and improving community
 and environmental outcomes.

The teams should identify projects that would benefit from additional coordination, transparency, and oversight during the permitting and environmental review process. Consistent with the Action Plan, sector-specific teams must submit their list of large, complex, or significant projects to OMB, CEQ, and the Permitting Council Executive Director. Sector-specific teams should submit their initial list of projects to OMB, CEQ, and the Executive Director by April 5, 2023. OMB, CEQ, and the Executive Director will review and consult with sector teams on these projects to determine which projects should be posted to the Dashboard for transparency purposes (transparency projects). Sector teams should finalize their lists by May 5, 2023. Sector teams should review and update their project list on at least a quarterly basis thereafter.

1.4 What other activities should the sector-specific teams report on a regular basis?

Sector-specific teams should report on initiatives and strategies to address complicated matters, disputes, resource constraints, and other issues that warrant the Permitting Council's attention as they arise and on at least a quarterly basis to the Permitting Council Executive Director, CEQ, and OMB. For example, sector-specific teams should report on progress in the development of programmatic reviews and other programmatic approaches to facilitate efficient and effective environmental reviews and permitting of projects within the sectors. The teams also should report to the Permitting Council on situations where lack of interagency coordination, staffing limitations, implementation or operational challenges, or legal or policy issues may hinder timely delivery of specific infrastructure projects. In addition, the teams should identify for Permitting Council consideration potential mechanisms to advance innovation, including technological innovation and interoperability, to make permitting and environmental reviews more efficient and effective. As relevant, the sector-specific teams should also identify and report on issues and areas that may require special attention during the implementation and operation of infrastructure projects.

1.5 What actions should agencies take to accelerate smart permitting through early crossagency coordination?

Agencies should identify approaches to execute their environmental review and permitting responsibilities for infrastructure projects that are collaborative and seek to harmonize their approach to implementing statutory requirements. These efforts should seek to deconflict requirements such that they prevent process bottlenecks; build common understanding; and contribute to effective, efficient, timely, inclusive, and sound scoping of infrastructure projects. Agencies also should identify, design, and execute programmatic efforts to address common

 $^{^{9}}$ See Section 2.2 for more information about transparency projects.

issues, reduce duplication, and resolve resource conflicts while also working jointly with agency partners at the Federal, Tribal, State, territorial, and local levels to advance cross-cutting programmatic efforts. These efforts could include identification of internal- or cross-agency automation of application information, compensatory mitigation requirements and credit availability, and improved community outcomes.

Section 2. Establishing Clear Timeline Goals and Tracking Key Project Information

2.1 The Action Plan directs lead agencies, in coordination with cooperating agencies, to establish and post project permitting schedules with clear timeline goals that are both ambitious and realistic, contain relevant milestones, and meet all requirements in applicable law to complete environmental review and permitting in a sound and timely manner. What factors should agencies consider when establishing permitting schedules?

Agencies should ensure that permitting schedules include the relevant actions and milestone completion dates for each agency involved in any Federal environmental review or permitting required for the project and Tribal, State, territorial, and local reviews required for the project, to the maximum extent possible. Permitting schedules should reflect the use of the most sound, efficient, and expeditious applicable processes, including the coordination and alignment of Federal reviews of projects and Tribal and state reviews, consideration of best practices for public participation, and the reduction of permitting and project delivery time. For FAST-41 covered projects, agencies must use the relevant Recommended Performance Schedules established by the Permitting Council Executive Director as a starting point to develop their project-specific permitting timetables, ¹⁰ and make appropriate modifications to account for the unique circumstances and needs of the project. For non-FAST-41 covered projects, agencies should set ambitious and realistic permitting schedules, consistent with applicable laws and regulations, that account for the unique circumstances and needs for the project. Initial schedules may be established for categories of similar projects to reduce duplication and enhance efficiency in the delivery of sound and complete environmental review and permitting decision making.

When establishing permitting schedules, consistent with applicable law, agencies should consider factors such as the project's overall size and complexity, the project's regional or national economic significance, the project's environmental and climate benefits, the sensitivity of the natural or historic resources that the project may affect, impacts on communities with environmental justice concerns, and the overall cost and financing plan for the project. Agencies also should consider the needs and priorities of affected communities following proactive, early, and continuous engagement. Additionally, agencies should consider the extent to which the project can rely on, adopt, or incorporate by reference components of any high quality NEPA or similar state or Tribal analyses completed for other geographically proximate or similar projects.

As appropriate and consistent with applicable law, agencies should prioritize resources and set highly ambitious schedules, particularly for projects likely to advance significant benefits to the public consistent with the Administration's goals.

^{10 42} U.S.C. § 4370m-2(c)(2)(B).

Agencies should seek to reduce duplication, enhance effective, efficient, and informed decision making, and avoid or reduce environmental harm. Agencies also should consider the staffing and resources available to the lead, cooperating, and participating agencies involved in the environmental review and permitting process. Agencies should consider the project's potential to advance the Administration's goals, as described in section 1.3, when considering how to allocate staff and resources to establish ambitious and realistic schedules for each project.

Pursuant to the Bipartisan Infrastructure Law, schedules for transportation projects meeting the definition of "major project" under 23 U.S.C. § 139 should be consistent with an agency average of not more than 2 years, to the maximum extent practicable and consistent with applicable Federal law. Permitting timetables for FAST-41 covered projects and transparency projects must comply with the requirements of FAST-41. 11

A Chief Environmental Review and Permitting Officer (CERPO) for each agency, including subagencies of a department, where appropriate, should review and approve each project's permitting schedule, permitting timetable, and related plans for quality assurance. The quality assurance plans should establish how the agency is completing its environmental review and permitting decision making for infrastructure projects in a sound and timely manner. Agencies are expected to establish internal systems, tools, and processes to track key project information and data, including the ongoing management of permitting schedules and plans.

2.2 Which projects must be posted on the Permitting Dashboard?

The following projects must be posted on the Federal Permitting Dashboard: 12

- <u>FAST-41 Covered Projects:</u> Projects identified as "covered" projects under Title 41 of the Fixing America's Surface Transportation (FAST) Act; and
- <u>Department of Transportation (DOT) Projects:</u> DOT highway, public transportation, railroad, and multimodal projects subject to 23 U.S.C. § 139 and requiring an environmental assessment or an environmental impact statement.

The Bipartisan Infrastructure Law gives the Permitting Council Executive Director new authority to direct an agency to add a project that is not a FAST-41 covered project to the Dashboard in the interest of transparency (transparency projects). ¹³ Appendix A contains guidance to Permitting Council agencies on which projects should be added to the Dashboard pursuant to this new authority, including those initially identified by sector-specific teams.

2.3 Should Agencies track key environmental review and permitting information of infrastructure projects that are not posted on the Permitting Dashboard?

^{11 42} U.S.C. § 4370m-2(c).

¹² https://www.permits.performance.gov/

¹³ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 § 70801(c)(2)(A); 42 U.S.C.

 $[\]S 4370 \text{m-2(b)(2)(A)(iii)(I)}.$

Yes. The Permitting Action Plan emphasizes accountability, tracking, and transparency for infrastructure projects. Agencies should ensure they have systems and processes in place to track all infrastructure-related environmental impact statements, environmental assessments, and categorical exclusions the agency is responsible for, at a minimum including project name, sector, and timeframe for completion for all individual reviews and decisions. Agencies should include a plan and timeline for developing these systems and processes in their action plans. Agencies should use data and information from these projects internally and in collaborative, cross-agency efforts to refine processes to enhance effective decision making, improve responsiveness to affected communities, identify opportunities for programmatic analyses, and identify and measure improved environmental and community outcomes.

Section 3. Engaging in Early and Meaningful Outreach and Communication with Tribal Nations, States, Territories, and Local Communities

3.1 What actions can agencies take to provide early and meaningful engagement to Tribal Nations, States, territories, and local communities?

Proactive, early, and continuing engagement with the public and Tribal, State, local, and territorial partners is fundamental to sound and efficient environmental review and permitting processes that consider the needs and priorities of communities. Effective stakeholder engagement involves the identification of the relevant parties and interests that the project may affect, early and meaningful communication about the project and its impacts, and open discussion about how to address affected parties' interests to the extent possible. Because engagement needs and the techniques to meet them vary by community, agencies should tailor community outreach to address any unique engagement needs of potentially affected communities. Agencies should consider identifying a chief public engagement officer, or otherwise dedicate specific staffing, and partnering with trusted local messengers to enhance the effectiveness and efficiency of public participation and conduct proactive outreach to diverse community members. In projects that may have Tribal implications, agencies should hold consultations with Tribal Nations, in alignment with Executive Order 13175¹⁴ and the Presidential Memorandum on Uniform Standards for Tribal Consultation. 15 Agencies also should coordinate with their environmental justice and public outreach teams, and those of any cooperating and participating agencies, to maximize efficient and effective community engagement. Agencies should empower and equip their field offices, and provide appropriate oversight and accountability, to ensure field offices deliver coordinated, proactive cross-agency outreach and stakeholder engagement that serves the needs of potentially affected communities. Some examples of early and meaningful stakeholder outreach can be found in:

¹⁴ Executive Order 13175, Consultation and Coordination With Indian Tribal Governments https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments
¹⁵ Presidential Memorandum on Uniform Standards for Tribal Consultation (Nov. 30, 2022),

¹⁵ Presidential Memorandum on Uniform Standards for Tribal Consultation (Nov. 30, 2022), https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/

- Principles for Effective Stakeholder Engagement in Infrastructure Permitting and Review Processes:10
- Suggested Best Practices for Industry Outreach Programs to Stakeholders;¹⁷
- Early Coordination with Indian Tribes During Pre-Application Processes; 18
- American Indian/Alaska Native (AI/AN) Outreach Responsibilities; 19
- Collaboration in NEPA: A Handbook for NEPA Practitioners; 20
- Promising Practices for EJ Methodologies in NEPA reviews;²¹ and
- Procedures for Consultations with Indian Tribes.²²

For all projects published on the Permitting Dashboard, agencies should post and maintain information on the Dashboard about public engagement opportunities 23 and the status of mitigation measures agreed to as part of the environmental review and permitting process²⁴ to the extent available.

Section 4. Improving Responsiveness, Technical Assistance, and Support

4.1 How should agencies share resources, trainings, and tools to assist project sponsors, permit applicants, affected communities, Tribal Nations, and other stakeholders to navigate the environmental review and permitting process effectively and efficiently?

Agencies should post information about their resources, trainings, and tools, including programmatic solutions and ongoing opportunities, on an accessible public webpage designed to foster public, sponsor, and community understanding of requirements and opportunities to engage and improve participation in Federal processes. DOT²⁵ should update the Dashboard to include a central resources page with links to each agency's webpages with resources, trainings, and tools. Agencies should provide DOT with their webpage information and provide updates

¹⁶ Udall Foundation, Principles for Effective Stakeholder Engagement in Infrastructure Permitting and Review Processes, Udall Foundation, available at https://udall.gov/documents/Institute/Udall-InfrastructureStakeholderEngagementPrinciples Final.pdf.

17 Federal Energy Regulatory Commission, Suggested Best Practices for Industry Outreach Programs to

Stakeholders (July 2015), https://www.ferc.gov/sites/default/files/2020-04/stakeholder-brochure.pdf.

¹⁸ Advisory Council on Historic Preservation, Early Coordination with Indian Tribes During Pre-Application Processes, https://www.achp.gov/sites/default/files/documents/2019-

^{10/}EarlyCoordinationHandbook 102819 highRes.pdf.

¹⁹ Farm Serv. Agency, American Indian/Alaska Native (AI/AN) Outreach Responsibilities,

https://www.fsa.usda.gov/Internet/FSA Notice/ao 1803.pdf.

CEQ, Collaboration in NEPA: A Handbook for NEPA Practitioners (Oct. 2007), https://ceq.doe.gov/docs/get-

involved/Collaboration in NEPA Oct2007.pdf.

21 Federal Interagency Working Group on Environmental Justice & NEPA Committee, <u>Promising Practices for EJ</u> Methodologies in NEPA Reviews (Mar. 2016), https://www.epa.gov/sites/default/files/2016-

^{08/}documents/nepa promising practices document 2016.pdf.

22 Department of the Interior, *Procedures for Consultations with Indian Tribes* (Nov. 9, 2015), https://www.boem.gov/sites/default/files/documents/about-

boem/Chapter%205%20DOI%20Procedures%20for%20Consultation%20with%20Indian%20Tribes.pdf. ²³ See also 42 U.S.C. § 4370m-2(b) (2) (A) (iii) (II) (dd), (3) (A) (iii).

 $^{^{24}}$ See also 42 U.S.C. § 4370m-2(b) (3) (A) (i) (II) (bb) & (V).

²⁵ The Permitting Dashboard is administered by DOT.

when changes are made to the weblinks to ensure the central resources page remains up to date. Agencies should directly engage with each other and with project sponsors, permit applicants, potentially affected communities, Tribal Nations, and other stakeholders to ensure these resources are widely disseminated and shared. Additionally, agencies should seek opportunities to provide jointly developed information, training materials, and joint training or outreach sessions, project information, and materials to assist project sponsors, permit applicants, potentially affected communities, Tribal Nations, and other stakeholders when navigating the Federal environmental review and permitting processes. To successfully deliver these joint agency products and trainings, agencies should develop regionally tailored materials, sessions, and information aimed at improving the environmental review and permitting process, outcomes, and experience. The Permitting Council Executive Director additionally can assist in facilitating discussions and sharing information among agencies to identify and resolve key issues that will smooth project delivery and foster a sound and efficient environmental review and permitting process with reduced delays and redundancies.

4.2 What types of actions can agencies take to make changes to environmental review and permitting information collection requirements that can be consolidated, clarified, simplified, or collected more efficiently?

Agencies should share information collected as part of the environmental review and authorization process, as appropriate, to minimize duplication and maximize use of technology for all environmental review and permitting-related information collection requests. This includes increasing the use and development of centralized and interoperable datasets and systems to inform environmental reviews and permit evaluations, cross-agency data-sharing, and collaboration with project sponsors, stakeholders, and interested parties to identify project-specific data needs to facilitate effective, timely, and informed reviews. Where feasible, agencies should collaborate on data centralization to facilitate more robust, standardized environmental reviews. Agencies also should consider engaging their stakeholders on improving the efficiency and effectiveness of information collection requests.

Section 5. Adequately Resourcing Agencies and Using the Environmental Review Process to Improve Environmental and Community Outcomes

5.1 What actions should agencies take to ensure adequate resources are available to implement the initiatives of the Action Plan?

Agencies should prioritize available resources to address workforce needs and use existing resources as efficiently as possible to facilitate efficient environmental review and permitting processes, including achieving permitting objectives and advancing the Administration's goals. Agencies also should identify and use any hiring, funding, and transfer authorities that can be applied to support effective and timely environmental reviews and permitting for infrastructure projects, including funding liaison positions, developing reimbursable agreements with permitting agencies or recipients, and establish interagency protocols to facilitate interagency communication about permitting actions.

Agency leadership should work to ensure not only that staffing levels are adequate to address anticipated environmental review and permitting-related workloads in a timely manner, but also that employees who conduct work on environmental review and permitting are provided with opportunities to build their expertise and for advancement within their respective agencies. To avoid mid-project staffing changes that cause delay, agency leadership also should work to mitigate staff turnover and implement strategies to increase retention to build environmental review and permitting expertise. Additionally, agencies' budget submissions should identify and prioritize funding needed to address workforce needs to implement the initiatives of the Permitting Action Plan. The Permitting Council Executive Director will continue ongoing consultations with OMB and the Office of Personnel Management (OPM) to identify additional opportunities and strategies to support agencies with adequate resourcing and staffing. Agencies also should notify the Executive Director of any urgent resource constraints that are likely to cause significant delays on a permitting timetable so that the Executive Director can raise the issue to the Permitting Council, as needed.

5.2 How can agencies use the environmental review process to help deliver improved environmental and community outcomes?

The Permitting Action Plan states that agencies should use the environmental review and permitting process to help deliver improved environmental and community outcomes. These outcomes are the real world physical, environmental, and social effects, both beneficial and adverse, of a project over its lifetime. Agencies should follow best practices for assessing and disclosing these outcomes in environmental reviews, including analyzing reasonable alternatives. These outcomes include qualitative and quantitative descriptions of a project's environmental and community effects over the lifetime of the project and processes and mitigation measures developed to address those effects, including measures that are community-led or based. Environmental outcomes refer to the effects of a project on ecological (including natural resources), aesthetic, and cultural resources, as well as on public health. Community outcomes include the effects of a project on community indicators such as employment, public safety, community cohesion, business displacement, community facility displacements, and residential displacement. Community outcomes also include any disproportionately high and adverse effects on communities with environmental justice concerns²⁶ including communities of color, Tribal and Indigenous communities, low-income communities, and other vulnerable populations in the area affected by a project. 27

 ²⁶ See, e.g., https://www.epa.gov/environmentaljustice
 ²⁷ See Exec. Order No. 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, 59 Fed. Reg. 7629 (Feb. 16, 1994), https://www.archives.gov/files/federal-register/executiveorders/pdf/12898.pdf ("Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts."); CEQ, Environmental Justice Guidance Under the National Environmental Policy Act (Dec. 1997), https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf; Federal Interagency
Working Group on Environmental Justice & NEPA Committee, Promising Practices for EJ Methodologies in NEPA Reviews (March 2016), https://www.epa.gov/sites/default/files/2016-08/documents/nepa promising practices document 2016.pdf.

Agencies can leverage the Permitting Dashboard and related guidance to summarize and communicate this type of information for projects included on the Dashboard, including transparency projects. Agencies should rely on information from completed reviews and are encouraged to provide entries that link to relevant environmental review sections describing improved environmental and community outcomes, provide summary data on key indicators of environmental quality, community impact, or public health; or summarize outcomes in plain language.

5.3 What information on greenhouse gas emissions will agencies need to post on the Permitting Dashboard?

The Permitting Action Plan states that the Permitting Council will explore using the Dashboard or another platform to provide access to information on greenhouse gas (GHG) emissions or emissions reductions associated with projects, consistent with the Administration's commitment to addressing climate change. CEQ's updated NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, published on January 9, 2023 (88 FR 1196), provides updated best practices for analyzing and disclosing GHG emissions and climate change effects. With CEQ's GHG emissions guidance in effect, CEQ and OMB plans to provide further assistance to agencies on posting clear and succinct information on GHG emissions associated with projects to the Dashboard or another platform.

Section 6. Agency Action Plans

6.1 What information should be included in the Agency Action Plans and when should they be submitted?

At a minimum, all Agency Action Plans should include:

- Key strategies, processes, milestones, and deadlines the agency will use to implement each of the five key elements of the Permitting Action Plan:
 - Accelerating smart permitting through early cross-agency coordination, including at the field level, to appropriately scope reviews, reduce bottlenecks, develop programmatic solutions, and use the expertise of sector-specific teams;
 - Establishing clear timeline goals and tracking key project information to improve transparency and accountability and provide increased certainty for project sponsors and the public. This information should include a description and examples of the systems, tools, and processes agencies plan to use to manage key project information and data, ensure the development of comprehensive and coordinated project timetables and schedules, deploy programmatic solutions to enhance and accelerate delivery of sound and informed decisions, and complete environmental review and permitting in a sound and timely manner consistent with law and the Action Plan;
 - Engaging in early and meaningful engagement and communication with Tribal Nations, States, territories, and local communities, including processes to ensure effective community engagement and sound and effective permitting consistent

- with this Administration's environmental and community values and commitment to advancing environmental justice;
- Improving agency responsiveness, technical assistance, and support to navigate
 the environmental review and permitting process effectively and efficiently; and
- Adequately prioritizing agency resources to offices engaged in the environmental review and permitting process and using this process to improve environmental and community outcomes, including how the agency plans to prioritize available resources to address workforce needs and implementation of the initiatives in the Action Plan to include processes to internally disseminate information and provide training and support to field offices.
- Key performance measures and data the agency will track to monitor performance, including a description of the mechanisms the agency has in place to track the implementation of mitigation measures; and
- Processes for addressing and elevating issues, including schedule delays, disputes, and other issues impacting the environmental and permitting process, to senior agency officials and the Permitting Council, as appropriate.

Agencies should submit their final Agency Action Plans to OMB, CEQ, and the Executive Director for review by April 5, 2023.

6.2 How should agencies track performance and monitor progress?

Agencies should identify performance measures and data that are meaningful for analyzing progress in advancing decision making for infrastructure project environmental review and permitting and identifying ways to improve internal agency performance and cross-agency collaboration. Accurate and timely data should inform decision making, identify areas for process improvements and increased collaboration, identify resource needs, and drive progress towards improved outcomes.

For the Permitting Action Plan, agencies should establish performance goals that include performance indicators and targets in order to actively monitor progress related to the timely completion of environmental reviews and authorization decisions, increased coordination and transparency, and improved environmental and community outcomes, including public engagement opportunities and implemented mitigation measures. Starting with the 2024 Agency Performance Plan, agencies should incorporate these performance goals and indicators into their annual agency performance plans, and begin reporting progress against achieving those goals in the annual 2023 Agency Performance Report. Agencies should use information posted to the Permitting Dashboard to inform such measures and as a basis for establishing how to track performance. Agencies should use information from the Permitting Dashboard's Data Portal, internal agency tracking systems, and historical data to establish baseline data and set benchmarks and targets for future performance to drive agency decision-making and progress.

6.3 What should be addressed in agency elevation and issue resolution plans?

To enable project sponsors, elected representatives, and affected communities to know where to go to get up-to-date information on project status and engage, agencies should identify and make available to the public specific agency-wide points of contact for all relevant environmental

review and permitting processes to facilitate contact from external entities, including affected communities. This can be a specific individual or email address that is frequently checked with timely responses provided. Similarly, agencies should maintain such a list for use internally by the agency and other Federal agencies. Agencies should keep these communication lists up-to-date and include points of contact both at the Department-level, where applicable, as well as across sub-agencies and bureaus. Agencies should have such points of contact in place by the end of 2022.

Agencies should develop and implement an internal issue identification and resolution process, so that issues identified by field or regional offices are resolved promptly or elevated swiftly. This process should include feedback from the relevant permitting and environmental review points of contact and be informed by the key project information tracked via the internal system(s) of record to ensure internal sub-agency issues and bottlenecks on projects are avoided or resolved rapidly. These established mechanisms may then be deployed as the foundation for the department-wide issue and dispute resolution procedures, involving the CERPO and Permitting Council member, to ensure that fully informed, Department-level issues and concerns are brought forward for interagency dispute resolution.

ATTACHMENT

Appendix A: Guidance on Adding Infrastructure Projects to the Permitting Dashboard in the Interests of Transparency

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APPENDIX A

Office of Management and Budget Council on Environmental Quality Federal Permitting Improvement Steering Council Executive Director

Guidance on Adding Infrastructure Projects to the Permitting Dashboard to Promote Transparency

Enacted in November 2021, Infrastructure Investment and Jobs Act (referred to as the Bipartisan Infrastructure Law) amended Title 41 of the Fixing America's Surface Transportation Act (FAST-41). The Executive Director of the Federal Permitting Improvement Steering Council (Permitting Council) can now direct lead agencies for National Environmental Policy Act (NEPA) reviews to post to the Federal Permitting Dashboard (Dashboard) projects other than FAST-41 "covered" projects if the Executive Director determines that posting such projects is "in the interests of transparency." ²⁸ Lead agencies must post such "transparency projects" on the Dashboard within 14 days of the Executive Director directing them to do so, and must include the following information:

- A comprehensive permitting timetable that contains all environmental reviews and authorizations needed for the project;
- 2. The status of the compliance of each lead agency, cooperating agency, and participating agency with the permitting timetable;
- Any modifications of the permitting timetable, including a narrative explaining why the permitting timetable was modified; and
- 4. As it becomes available, information about project-related public meetings, public hearings, and public comment periods, posted in English and the predominant language of the community or communities that would be most affected by the project.

The lead agency for each transparency project should keep the project timetable current and post a written explanation for any pause in the Federal environmental review or permitting process.

The Permitting Action Plan directs the Executive Director to periodically identify projects that should be posted to the Dashboard as transparency projects. In consultation with the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ), the Executive Director has identified the following project types that may be suitable for posting to the Dashboard in the interests of transparency. The Executive Director will coordinate with lead agencies before directing them to post projects to the Dashboard.

²⁸ Pub. L. No. 117-58 § 70801(c)(2)(A); 42 U.S.C. § 4370m-2(b)(2)(A)(iii).

Within 30 days of the issuance of this guidance, lead agencies should identify for the Executive Director all infrastructure projects for which the lead agency is preparing an environmental impact statement in the following sectors:

- Renewable or conventional energy production/generation;
- Electricity transmission;
- Surface transportation (including roads, bridges, tunnels, and railroads);
- Aviation;
- · Ports and waterways;
- Water resource projects;
- Broadband;
- Pipelines;
- Manufacturing;
- Carbon capture;
- Critical minerals mining or processing;
- Stormwater and sewer infrastructure; and
- Drinking water infrastructure.

The FAST Act excludes certain projects from FAST-41, and agencies do not need to submit these projects to the Executive Director as potential transparency projects. Specifically, these include infrastructure projects administered by the U.S. Department of Transportation; (ii) infrastructure projects administered by another agency pursuant to title 49 of the U.S. Code; and (iii) infrastructure projects that are subject to section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. § 2348). ²⁹

The Biden-Harris Permitting Action Plan additionally directs sector-specific teams to identify and provide regular updates to the Permitting Council on the status of "large, complex, or significant" projects. Consistent with the Permitting Action Plan Implementation Guidance, each team must submit a proposed list of these projects to OMB, CEQ, and the Executive Director for review and potential addition to the Dashboard as transparency projects. Each team also should identify any additional projects that, in the team's view, would benefit from transparency during the environmental review and permitting process. If the Executive Director determines that a Dashboard entry for any submitted project is in the interests of transparency, the Executive Director will direct the lead agency for that project to add the project to the Dashboard as a FAST-41 transparency project.

In addition to the information required to be posted to the Dashboard for FAST-41 transparency projects outlined above, for each project posted under this guidance, OMB, in consultation with CEQ, additionally requires lead agencies to post the status of mitigation measures agreed to as part of the environmental review and permitting process to the extent possible, including whether and when the mitigation measures have been fully implemented. Additionally, Section 5 of the Permitting Action Plan Guidance provides information on how agencies can use the environmental review process to improve environmental and community outcomes. Agencies are encouraged to leverage the Permitting Dashboard to share and publicly communicate

²⁹ Pub. L. 114–94 § 11503(b), 129 Stat. 1312, 1692 (Dec. 4, 2015).

information about how their projects improved these outcomes, including by linking to information in the relevant NEPA reviews. Agencies may contact OMB or CEQ for questions regarding the posting of such information on the Dashboard.

The Honorable Cathy McMorris Rodgers Chair, Energy & Commerce Committee U.S. House of Representatives Washington, DC 20510-4105 The Honorable Doris Matsui Ranking Member, Communications & Technology Subcommittee U.S. House of Representatives Washington, DC 20510-4105

The Honorable Frank Pallone Ranking Member, Energy & Commerce Committee U.S. House of Representatives Washington, DC 20510-4105

Re: Letter for the Record, April 19, 2023, Hearing on "Breaking Barriers: Streamlining Permitting To Expedite Broadband Deployment."

Dear Chairman Latta and Ranking Member Matsui,

The Fiber Broadband Association (FBA) strongly supports streamlining the process for fiber broadband service providers and their contractors to gain access to public and private rights-of-way and infrastructure, enabling the expeditious deployment of their networks. For this reason, we applaud you and other members of the House Energy & Commerce Subcomittee on Communications & Technology for holding a hearing to "break barriers" and find solutions to facilitate permitting.

We are at a critical and historical moment in our nation's deployment of essential fiber infrastructure. Not only is the private sector continuing to invest more than \$75 billion annually overall in broadband facilities, but through the bipartisan leadership of Congress, the federal government is ensuring that all Americans will soon have access to reliable, high-speed broadband service. As a result, ~68.3 million U.S. homes have access to fiber, that is nearly half of U.S. households, and with coordinated, thoughtful planning, we are on track to reach well over 100 million homes by 2030¹. However, to make this happen, broadband service providers, contractors, vendors, and government agencies must work together on all aspects of deployment. This is especially important to guarantee taxpayer dollars are used most effectively.

Gaining access to public right-of-ways and infrastructure has often posed challenges for broadband deployment. FBA service provider and contractor members have found that obtaining permits from government agencies can take anywhere from three to seven years. This timeline slows private sector

¹RVA, LLC. and Fiber Broadband Association, "2022 North American Fiber Status." December, 2022.



builds, and it is certainly a concern for the Broadband Equity, Access, and Deployment (BEAD) program, where recipients of grants needs to build to unserved and unserved locations within four-years.

To address this problem, FBA suggests that the Committee should consider a variety of solutions so broadband can be deployed expeditiously, including implementing shot clocks; improving communication and coordination among government permitting agencies and stakeholders; having agencies establish a single point of contact to handle applications; ensuring there is enough staff to quickly process permitting applications; standardizing applications and the review processes; implementing fair and reasonable permitting requirements; and increasing transparency.

We look forward to working with the Committee and stand ready to assist to support this shared goal in ensuring all Americans have access to fiber broadband networks.

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Gary Bolton President and CEO





U.S. Chamber of Commerce

1615 H Street, NW Washington, DC 20062-2000 uschamber.com

April 18, 2023

The Honorable Robert Latta Chair Subcommittee on Communications and Technology Committee on Energy and Commerce U.S. House of Representatives Washington, DC 20515 The Honorable Doris Matsui Ranking Member Subcommittee on Communications and Technology Committee on Energy and Commerce U.S. House of Representatives Washington, DC 20515

Dear Chairman Latta and Ranking Member Matsui:

The U.S. Chamber of Commerce respectfully submits the following statement for the record for the House Energy and Commerce's upcoming Subcommittee on Communications and Technology hearing entitled "Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment." We commend the Subcommittee for holding this critical hearing to examine barriers to broadband deployment as well as solutions like modernized permitting.

The United States needs infrastructure improvements to remain competitive, support long-term economic growth, address the digital divide, and to support the communities that need infrastructure investment the most. Unfortunately, uncertainty and delays in broadband permitting processes increases the cost of deployment and limit the impact of federal and private sector investments and innovation. A more efficient permitting process is needed for timely upgrades to America's communications infrastructure. Earlier this month, the Chamber launched the *Permit America to Build* campaign, which calls on Congress to enact meaningful, durable legislation to modernize America's permitting processes before the end of the summer.

The Chamber encourages Congress and the Subcommittee to consider the following policies to improve permitting to spur broadband deployment:

- Improve Access to Federally Managed Lands: Congress should examine how to
 best effectuate deployment on lands managed by federal agencies (e.g.,
 Department of Interior, Bureau of Land Management, Bureau of Indian Affairs,
 U.S. Forest Service). These updates will be particularly important in the coming
 months and years as projects financed by the Infrastructure Investment and Jobs
 Act and other broadband programs may be located on or cross federal lands.
- Facilitate Timely and Transparent NEPA Processes: Although the Chamber fully
 supports the environmental stewardship goals of the National Environmental
 Policy Act (NEPA), infrastructure projects of all kinds are often subject to endless
 delays and litigation, broadband is no different. The permitting process suffers
 from multiple agency roadblocks including lack of transparency and timely
 reviews, and numerous opportunities for project opponents to make challenges.

As a result, many in the private sector are reluctant to tie up capital in projects that must navigate the burdensome federal permitting process, costing jobs and the public benefits associated with better infrastructure.

Timely, transparent NEPA processes are needed to encourage investment that is needed to sustain and grow our economy. Moreover, Congress should seek to exclude certain broadband infrastructure project approvals and siting decisions from NEPA review processes entirely, such as expanding and clarifying where NEPA is not required for temporary uses, or where new licensing would not substantially alter existing facilities.

- Streamline Other Federal Requirements: Congress should consider solutions to addressing other federal barriers to deployment such as clarifying that the National Historic Preservation Act is not required for certain temporary uses or where new licensing would not substantially alter existing facilities.
- Address State and Local Barriers to Deployment. Congress should also consider
 the impact of state and local permitting requirements on the deployment of
 broadband infrastructure. Specifically, these requirements include cable system
 transfers, franchise terms and termination, notification of road changes,
 unreasonable street restoration fees, municipal and cooperative pole
 attachment, requests for access, required franchises agreements or similar
 approvals as a prerequisite for permitting, mandatory "in-kind" compensation to
 municipalities, onerous liability provisions, and excessive and arbitrary fees.

State and local permitting requirements often hinder the deployment of broadband and thus may require federal action through preemption, shot clocks, and other policies. Congress should also leverage existing and future federal broadband dollars to incentivize states to pursue permitting reforms at the state and local levels. Finally, reforms should not only focus on modernizing procedures for new sites but also streamlining procedures for colocation, modifications, and upgrades to existing facilities.

The United States has a unique opportunity to help close the digital divide and bring internet access to millions of Americans. Modernizing broadband permitting will be necessary to achieve this objective. The Chamber looks forward to working with Congress on this issue and other policy solutions to connect all Americans.

Sincerely,

Tom Quaadman

Executive Vice President Chamber Technology Engagement Center U.S. Chamber of Commerce

cc: Members of the Subcommittee on Communications and Technology

FINAL REPORT ON STATUS OF IMPLEMENTATION OF MOBILE NOW ACT SECTION 606(c) REQUIREMENTS

INTRODUCTION

On March 23, 2018, the Consolidated Appropriations Act 2018 was signed into law, which provided appropriations through fiscal yar 2018.

1 Division P, the RAY BAUM's Act of 2018, contains several Titles that provide directions regarding communications, networks, mobile service, Wi-Fi, and broadband.

Title VI of Division P, the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (MOBILE NOW Act), has 23 sections that specifically focus on mobile or fixed wireless broadband spectrum, broadband infrastructure, and communications facility installations.

Section 606 of the MOBILE NOW Act contains several provisions intended to facilitate the deployment of communications facility installations on federal property. Section 606(c), in particular, directs the National Telecommunications and Information Administration (NTIA) to coordinate with the Department of the Interior (DOI), the Department of Agriculture (USDA), the Department of Defense (DOD), the Department of Transportation (DOT), the Office of Management and Budget (OMB), and the General Services Administration (GSA) to develop recommendations for streamlining processes when considering applications to locate broadband facilities on federal property within two years from the date of enactment (March 23, 2020). ⁴

The MOBILE NOW Act directs NTIA, within two years of developing these recommendations to streamline application processes, to report to Congress on the status of their implementation and any process improvements resulting from such recommendations. ⁵ In 2020, NTIA delivered the first report to Congress, as directed, which outlined measures being taken to streamline Federal permitting of broadband projects. ⁶ This report follows up on the measures described in the NTIA 2020 report to Congress and the progress made to implement the provisions found in the MOBILE NOW Act.

⁶ See National Telecommunications and Information Administration (NTIA), *Implementation of Mobile Now Act Section 606(c) Requirements* (Oct. 2020) (MOBILE NOW Report), available at https://www.ntia.doc.gov/report/2020/ntia-report-section-606c-mobile-now-act.



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¹ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348 (2018), available at https://www.congress.gov/115/plaws/publ141/PLAW-115publ141.pdf.

² Id. at Division P, tit. VI, MOBILE NOW Act, 132 Stat. 1097.

³ Section 606(d) of the MOBILE NOW Act defines a communications facility installation as: "(A) any infrastructure, including any transmitting device, tower, or support structure, and any equipment, switches, wiring, cabling, power sources, shelters, or cabinets, associated with the licensed or permitted unlicensed wireless or wireline transmission of writings, signs, signals, data, images, pictures, and sounds of all kinds, and (B) any antenna or apparatus that—(i) is designed for the purpose of emitting radio frequency; (ii) is designed to be operated, or is operating, from a fixed location pursuant to authorization by the Federal Communications Commission or is using duly authorized devices that do not require individual licenses; and (iii) is added to a tower, building, or other structure." 47 U.S.C. § 1455(d)(1).

⁴ MOBILE NOW Act § 606(c)(2)(A)-(B), 132 Stat. 1103.

⁵ Id. at § 606(c)(2)(C).

BACKGROUND

Prior to the passage of the MOBILE NOW Act, the American Broadband Initiative (ABI) was established to stimulate increased private investment in broadband infrastructure and services to fill broadband connectivity gaps in America. Since its formation, the ABI has been working diligently to fulfill its mission of ensuring that government processes are clear and responsive to stakeholders, that government assets provide the greatest possible benefit to the public, and that the government is performing its duties as a steward of taxpayer funds. In February 2019, the ABI published its Milestones Report, outlining a vision for how the federal government can encourage the expansion of broadband access and actions that agencies are taking to increase private-sector investment in broadband. On June 25, 2020, the ABI released a Progress Report to provide an update on its work to date in fulfilling the commitments described in the Milestones Report. The ABI is comprised of two major workstreams: Streamlining Federal Permitting (SFP) and Maximizing the Impact of Federal Funding. Each of these workstreams is led by and comprised of agencies with particular equities and expertise in that area.

The ABI's Streamlining Federal Permitting workstream is striving to make government processes clear, transparent, and responsive to stakeholders. By reducing permitting delays, minimizing paperwork, and designating clear federal points of contact, federal agencies will enable broadband providers to focus on building broadband networks more quickly. The Department of Homeland Security (DHS) and DOI co-chair this workstream. The other workstream member agencies include: USDA, Department of Commerce (NTIA and the First Responder Network Authority (FirstNet Authority)), DOD, DOT, GSA, OMB, the Department of Veterans Affairs, the Advisory Council on Historic Preservation (ACHP), and the Council on Environmental Quality (CEQ). The Federal Communications Commission (FCC), as an independent regulatory agency, participates in this workstream as a consulting member.

To date, the ABI's Streamlining Federal Permitting Workstream has served as the vehicle to implement section 606(c) of the MOBILE NOW Act because the agencies enumerated in the statute and tasked with developing recommendations are all members of this workstream.

Pursuant to the MOBILE NOW Act's provisions, the Streamlining Federal Permitting Workstream focused on the following elements to develop the recommendations called for under section 606(c):

- 1. Procedures for tracking broadband facility applications;
- 2. Methods to reduce application review and approval timelines;
- Policies expediting renewals of easements, licenses or other authorizations for broadband facility installations; and

⁷ On February 13, 2019, the ABI was launched with the release of the Milestones Report. See American Broadband Initiative (ABI), Milestones Report (Feb. 2019), available at: https://www.ntia.doc.gov/files/ntia/publications/american_broadband_initiative_milestones_report.pdf. On June 25, 2020, the ABI released a Progress Report to provide an update on its work to date in fulfilling the commitments described in the Milestones Report. See ABI, Progress Report (June 2020), available at: https://www.ntia.doc.gov/report/2020/ABI_Progress_Report.



4. Policies prioritizing or streamlining construction permits in previously disturbed rights-of-way.

Using these elements as a guide, the Streamlining Federal Permitting Workstream developed the following recommended agency actions, which were shared in the MOBILE NOW Report, which NTIA transmitted to Congress on October 27, 2020. Some of these activities have already been implemented or are currently in progress as noted below. The Streamlining Federal Permitting Workstream has continued to examine the feasibility of implementing the remaining recommended actions and continues to monitor the status of these actions. NTIA received updates through the workstream as to the process improvements.

Updates to Agency Actions Recommended in 2020 MOBILE NOW Report

1. Procedures for the tracking of applications

- a) Executive Order 13821, Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America, requires GSA to collect data and compile reports on Agency permitting timeframes, including the number of applications received, the number approved, the number rejected, the basis for any rejection, and the number of working days each application was pending before being approved or rejected. Since December 2018, GSA has submitted thirteen quarterly reports to OMB. The most recently submitted report for Q4 FY 2021 (submitted in January 2022) featured several key improvements to enhance readability, such as, redesigning the table of contents to include a "List of Figures" and a "List of Appendices" to improve the organization within the report, and the inclusion of two new graphs to convey data. It is also important to note that in FY 2021, 530 applications for broadband siting permits were approved by federal property managing agencies with an average time below the 270-day statutory requirement contained in the MOBILE NOW Act. GSA and the workstream members continuously work to improve the data collection process and facilitate the tracking of permit applications.
- b) On December 20, 2018, the Agriculture Improvement Act of 2018 (the Farm Bill) became law.⁹ Title VIII, Subtitle G, Section 8705, of the Farm Bill directs the USDA's Forest Service (USFS) to issue regulations that streamline the process for evaluating applications for communications facilities on National Forest System (NFS) lands. As a result of the Farm Bill, USFS amended its regulations at 36 CFR § 251.54(g)(4) in April 2020, to add a new subparagraph to its regulations establishing a process for tracking applications for communications uses that: (a) identifies the number of applications received, approved, and denied; (b) for applications that are denied, describing the reasons for the denial; and (c) describing the amount of time between receipt of an application and grant or denial of the application.¹⁰

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⁸ MOBILE NOW Report, supra note 6.

⁹ Agriculture Improvement Act of 2018, Pub. L. 115-334, 132 Stat. 4490 (2018), available at https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf.

¹⁰ See 36 CFR § 251.54(g)(4)(iii) (2020).

- c) USFS revised its directives at Forest Service Handbook (FSH) 2709.11, Chapter 90 in October 2020, to establish responsibility for a tracking system for communications use applications and to establish procedures for inputting data needed to track communications use applications.
- d) GSA created a national antenna application-tracking sheet that it distributed to its regional offices for use in January 2020. The tracking sheet measures the amount of time it takes for GSA regions to reject or approve and then process antennasiting applications, ensuring compliance with the 270-day statutory requirement for processing of telecommunications applications.
- e) The Federal Permitting Improvement Steering Council (FPISC) maintains the Federal Infrastructure Permitting Dashboard, an online tool for Federal agencies, project developers, and interested members of the public to track the Federal government's environmental review and authorization process for large or complex infrastructure projects, part of a government-wide effort to improve coordination, transparency, and accountability. 11 SFP members have explored the feasibility of leveraging this online tool to track applications for siting communications facilities on federal property. Further coordination with DOT and the Federal Permitting Improvement Steering Council (FPISC) leadership is needed to determine how best to implement this recommendation.
- DOI's Bureau of Land Management (BLM) is taking steps to update its LR2000 tracking system and transition to a new system, the Mineral and Lands Record System (MLRS). Additionally, on April 14, 2020, BLM launched an online system for the filing of a Standard Form (SF)-299 for communications uses that will further assist in the tracking of applications. SFP members will explore the feasibility of expanding an application tracking system to other DOI bureaus and other federal property-managing agencies.
- 2. Methods to reduce the amount of time between the receipt of an application and the issuance of a final decision on an application (270 days or less)
 - a) Establish the SF-299 as the Common Form In February 2020, USFS, working with GSA and other SFP workstream members, obtained OMB approval of revisions to the SF-299 to make it the common application form used by the private sector to seek permission to deploy communications infrastructure on federal property. The SF-299 is the standard form to be used by the federal property managing agencies that use an application to initiate the siting process, including DOI and GSA. The form can be accessed on the USFS website and NTIA's BroadbandUSA website. 12

https://www.fs.fed.us/specialuses/special_comm.shtml; see also BroadbandUSA, Federal Permitting, available at: https://broadbandusa.ntia.doc.gov/resources/federal/federal-permitting.



 $^{^{11} \}textit{See} \ \textbf{Federal Infrastructure Projects}, \textit{Permitting Dashboard}, \textit{available at:} \ \textbf{www.permits.performance.gov}. \ \textbf{The Projects}, \textit{The Proje$ FPISC dashboard is administered and maintained by the Department of Transportation. ¹² See USFS, Special Uses – Communications Uses, available at:

- Agencies believe that stakeholders have benefited from having a common application form that all agencies authorizing communications facilities or uses on federal assets accept by reducing costs and processing times. By using the common form, the application information provided by the stakeholders is the same for all agencies, providing government-wide consistency.
- Agencies continue to further improve their processes by exploring methods to accept the SF-299 electronically.
- Federal property-managing agencies will establish the 270-day standard per the MOBILE NOW Act.
 - O In 2018, USFS amended its directives at FSH 2709.11, Chapter 90 to provide that within 270 days of acceptance of an application for a new communications facility or communications use in or on a facility managed by the USFS, the authorized officer must grant or deny the application and notify the applicant in writing of the grant or denial. In 2020, USDA issued a Final Rule to amend USFS regulations to integrate the 270-day timeframe for responding to applications for a new communications facility or communications use in or on a facility managed by the USFS with the requirements in USFS directives.¹³
 - BLM proposes changing its rule to implement the 270-day customer service standard consistent with the MOBILE NOW Act. The proposed rule is planned to be published in the *Federal Register* during the third quarter of 2022.
 - BLM has established training opportunities for its realty staff to assist with processing broadband projects on public lands. Additionally, BLM is developing training opportunities for its stakeholders regarding the submittal of complete SF-299 applications to site broadband communications facilities.
- c) GSA updated the standardized U.S. Government Lease of Real Property for Communications Space in Fiscal Year 2020, including adding references to the term "Communications Facility Installation" as defined in the MOBILE NOW Act. GSA posted the revised templates to the telecommunications page of its website. 14
- d) The federal property-managing agencies explored the feasibility of accepting electronic filings of the SF-299, including attachments.
 - BLM is currently drafting a rule change to accept the electronic filing of the SF-299 application.
 - BLM is currently drafting a rule change to require the inclusion of geographic information system (GIS) information with applications.

¹⁴ See GSA, Wireless Telecommunications Installation, available at: https://www.gsa.gov/real-estate/real-estate-services/for-businesses-seeking-opportunities/wireless-telecommunications-installation.



¹³ See USFS Streamlining Final Rule, 85 Fed. Reg. 19660 (Apr. 8, 2020).

- e) USFS collected, verified, and mapped its communications sites and publicly released its Communications Sites Map Viewer in October 2019 for use by internal and external customers. This mapping tool provides basic information on USFS communications sites, including their geographical location, site designation, and local contact information.
 - This information will enable the public and stakeholders to locate communications sites on NFS lands and complete an initial feasibility assessment prior to submitting a proposal and application to site facilities on NFS lands.
 - USFS published the dataset to the Forest Service Geodata Clearinghouse. ¹⁵

3. Policies to expedite renewals of an easement, license, or other authorization to locate communications facility installations on federal lands

- Federal property-managing agencies have considered the feasibility of allowing automatic renewals unless changed conditions or circumstances exist.
- b) BLM is currently drafting a rule requiring the agency to notify the applicant of renewal decisions within 60 days prior to the end of the current authorization. Additionally, when a renewal application is filed timely, and the authorization is in compliance with all of the terms and conditions, the authorization would remain valid until the agency has made a decision on the renewal application.
- c) BLM has allocated additional appropriated funding to the various State Offices to assist with broadband deployment.
- d) Federal property-managing agencies have considered standardizing longer terms, e.g., 25 to 30 years, for communications use authorizations.
 - BLM is drafting a proposed rule for public comment that would establish a standard 30-year term.
 - USFS amended its regulations at 36 CFR § 251.54(g)(5) and revised its directives at FSH 2709.11, Chapter 90, to establish a term of 30-years for communications use authorizations, unless case-specific circumstances warrant a shorter term. ¹⁶

4. Policies prioritizing or streamlining construction permits in previously disturbed rights-of-way

a) Federal property-managing agencies apply National Environmental Policy Act (NEPA) categorical exclusions to streamline and expedite environmental reviews when warranted. Categorical exclusions are categories of actions that the agency has determined do not have a significant impact on the environment absent extraordinary circumstances. The use of categorical exclusions can shorten the timeframe for environmental analyses compared with the development of more

https://data.fs.usda.gov/geodata/edw/datasets.php?xmlKeyword=communications+sites.

¹⁶ See id. at 19661-62.

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¹⁵ See USFS, Download National Datasets, available at:

resource-intensive Environmental Assessments (EAs) or Environmental Impact Statements (EISs).

- Agencies develop categorical exclusions as part of their NEPA implementing procedures based on their experience and expertise. CEQ maintains a comprehensive list of federal agencies' categorical exclusions.¹⁷
- CEQ is working with several federal agencies to develop broadbandrelated categorical exclusions.
- b) On February 1, 2018, the FirstNet Authority updated its NEPA implementing procedures and revised its list of categorical exclusions and extraordinary circumstances. This will ensure that such procedures align with the FirstNet Authority's statutory mission and activities related to the deployment of the nationwide public safety broadband network and assist FirstNet in complying with NEPA, as well as CEQ and FCC regulations. As both an independent federal authority within NTIA and a licensee of the FCC, the FirstNet Authority must satisfy its own NEPA obligations as well as comply with FCC-promulgated NEPA procedures. These revisions will facilitate more efficient, effective, and timely NEPA reviews by simplifying and streamlining duplicative requirements.
- c) In November 2020, USFS amended its NEPA regulations at 36 CFR Part 220 to increase efficiency in its environmental analysis while meeting NEPA's requirements and fully honoring its environmental stewardship responsibilities. ¹⁸
 - The amended rule facilitates reliance on a categorical exclusion for special use authorizations, including authorizations for communications uses.
 - The amended rule expands the categorical exclusion for special use authorizations from 5 to 20 acres and removes the qualifying words "contiguous" and "minor" in reference to additional facilities.
 - The amended rule establishes a new categorical exclusion that does not require a project or case file and decision memo for reissuance of special use authorizations, which will simplify reliance on a categorical exclusion.
- d) USFS regulations at 36 CFR § 251.54(g)(4) that pre-date the MOBILE NOW Act provide for streamlining evaluation of applications for communications uses on previously disturbed NFS lands.
 - USFS may evaluate groups of applications for similar uses having minor environmental impacts with one analysis and approve them in one decision.
- e) Section 607 of the Mobile Now Act, Broadband Infrastructure Deployment, required the Secretary of Transportation to promulgate regulations to facilitate broadband infrastructure deployment. The Federal Highway Administration

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¹⁷ See NEPA, Categorial Exclusions, available at: https://ceq.doe.gov/nepa-practice/categorical-exclusions.html.

¹⁸ See USFS NEPA Compliance Final rule, 85 Fed. Reg. 73620 (Nov. 19, 2020).

¹⁹ See Streamlining, supra note 11 at 19666.

(FHWA) began the rulemaking process in June of 2019 to modify 23 CFR part 645—Utilities to include the Section 607 requirements. The rule was finalized in December of 2021 with an Effective date of March 3, 2022. In general, the Final Rule requires state DOTs to:

- o Identify a broadband utility coordinator;
- o Establish a process to register broadband entities;
- Establish a process to electronically notify such entities of the Statewide Transportation Improvement Program (STIP) on an annual basis and provide additional notifications as necessary to achieve the goals of this section; and
- Coordinate these initiatives with telecommunication and broadband plans and State and local transportation and land use plans, including strategies to minimize repeated excavations.

CONCLUSION

With the passage of the Infrastructure Investment and Jobs Act (IIJA), which authorized \$65 billion in new federal funding dedicated to broadband, it is imperative that federal permitting policies and procedures are effective, efficient, transparent, and streamlined to the greatest extent possible. While NTIA produced this report to provide an update on actions taken by agencies, we believe that leveraging the Federal Permitting Improvement Steering Council could greatly assist in addressing remaining broadband permitting challenges. FPISC includes senior agency leadership and is tasked by Congress to identify root causes in pain points, recommend policies and guidance to resolve the issues, and provide an escalation and coordination mechanism. The Department of Commerce, through its participation in FPISC and the Infrastructure Implementation Task Force, is committed to supporting these efforts to help realize the Biden-Harris Administration's goal of closing the digital divide and ensuring that all Americans have access to reliable, affordable, high-speed broadband.



[Second Reprint] **SENATE, No. 2674**

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JULY 6, 2020

Sponsored by: Senator STEPHEN M. SWEENEY District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Provides for uniform regulation of small wireless facility deployment in this State.

CURRENT VERSION OF TEXT

As amended by the Senate on June 21, 2021.



AN ACT concerning deployment of small wireless facilities and supplementing Title 40 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

- 1. The Legislature finds and declares that:
- a. The deployment of small wireless facilities and other nextgeneration wireless and broadband network facilities is a matter of federal and statewide concern and interest;
- b. Wireless and broadband products and services are a significant and continually growing part of the State's economy and encouraging the development of strong and robust wireless and broadband communications networks throughout the State is integral to the State's economic competitiveness;
- c. Rapid deployment of small wireless facilities will serve important Statewide goals, such as: meeting the growing consumer demand for wireless data; increasing competitive options for communications services available to the State's residents; promoting the ability of the State's residents to communicate with their neighbors and with their State and local governments; and promoting public safety;
- d. Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, are 'most costeffective for a wireless service provider when' deployed '[most effectively]' in '[right-of-way] rights-of-way';
- e. To meet the key objectives of federal law and P.L., c. (C.) (pending before the Legislature as this bill), wireless providers 'Ineed to have] must be granted' access to 'Ithe right-of-way] rights-of-way' and 'have' the ability to attach to infrastructure in 'Ithe right-of-way] rights-of-way on a competitively neutral basis' to densify wireless networks and to provide next-generation wireless services;
- f. Rates and fees for the permitting and deployment of small wireless facilities in 'Iright-of-wayI rights-of-way' and on authority infrastructure, including utility poles, throughout the State, consistent with federal law, is reasonable and will encourage the development of robust next-generation wireless and broadband networks for the benefit of residents throughout the State;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

'[g.] h.' The procedures, rates, and fees established in P.L., c. (C.) (pending before the Legislature as this bill) should be consistent with federal law and are fair, reasonable, and further the State's interest in facilitating and supporting a robust, reliable, and technologically-advanced wireless and broadband network and reflect a balancing of the interests of the wireless providers deploying new small wireless facilities and the interests of authorities in 'managing and' recovering the cost of managing '[access to the right-of-way] the rights-of-way'.

2. As used in P.L. , c. (C.) (pending before the Legislature as this bill):

"Antenna" means an apparatus designed for the purpose of emitting radio frequency, to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services. "["Antenna" shall not include an unintentional radiator, mobile station, or device authorized pursuant to 47 C.F.R. Part 15.]

"Antenna equipment" means equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as the antenna

"Antenna facility" means an antenna and associated antenna equipment. ²[¹Antenna facility] "Antenna facility" includes small wireless facilities. ²[An antenna facility] "Antenna facility" shall not include:

- a. the structure or improvements on, under, or within which the equipment is located;
 - b. wireline backhaul facilities; or
- c. coaxial or fiber optic cables that are not immediately adjacent to or directly associated with a particular antenna.

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"Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by the Commissioner of the Department of Community Affairs pursuant to P.L.1975, c.217 (C.52:27D-119 et seq.) or authority amendments to those codes that are of general application and are consistent with P.L., c. (C.) (pending before the Legislature as this bill).

"Applicant" means any person who submits an application and is a wireless provider.

"Application" means a request submitted by an applicant to an authority for a permit to: collocate a small wireless facility; install, modify, or replace a pole on which a small wireless facility will be collocated, mounted, or installed; mount or install a small wireless facility on a new or replacement pole; or install associated antenna

equipment adjacent to a structure on which a small wireless facility is or will be collocated, mounted, or installed.

"Authority" means '[a] the State and any unit of local government, and any board, commission, committee, authority, agency, office, officer, or employee thereof, which has jurisdiction and control over the use of a '[public]' right-of-way for the placement of a wireless facility within the '[public]' right-of-way or has zoning or land use control for the placement of a wireless facility not within a '[public]' right-of-way. "Authority" shall not mean a State court having jurisdiction over an authority.

"Authority pole" means a pole or utility pole owned or operated by an authority in a ¹[public] ¹ right-of-way.

"Collocate" or "collocation" means: mounting or installing an antenna facility on a pre-existing structure; or modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

"Communications facility" means the equipment and network components that provide communications services, including wires, cables, and associated facilities used by: a cable operator, as defined in 47 U.S.C. s.522; a telecommunications carrier, as defined in 47 U.S.C. s.153; a provider of an information service, as defined in 47 U.S.C. s.153; or a wireless service provider, as defined pursuant to this section.

"Communications service" means: cable service, as defined pursuant to 47 U.S.C. s.522, as amended; information service, as defined pursuant to 47 U.S.C. s.153, as amended; telecommunications service, as defined in 47 U.S.C. s.153, as amended; mobile service, as defined pursuant to 47 U.S.C. s.153, as amended; or wireless service other than mobile service.

"Communications service provider" means: a cable operator, as defined pursuant to 47 U.S.C. s.522, as amended; a provider of information service, as defined pursuant to ¹[24 of]¹ 47 U.S.C. s.153, as amended; a telecommunications carrier, as defined pursuant to 47 U.S.C. s.153, as amended; or a wireless service provider as defined pursuant to this section.

"Decorative pole" means an authority pole ¹, or a pole that is subsidized by an authority. ¹ that is specially designed and placed for aesthetic purposes ¹ [and on which no appurtenances or attachments, other than a small wireless facility, lighting, specially designed informational or directional signage, or temporary holiday or special event attachments, have been placed or are permitted to be placed according to non-discriminatory authority rules or codes [1].

"Facility" means an antenna facility or a structure that is used for the provision of personal wireless service, whether the personal wireless service is provided on a stand-alone basis or comingled with other wireless communications services.

"FCC" means the Federal Communications Commission of the United States.

"Fee" means a one-time, nonrecurring charge.

 "Historic district" or "historic landmark" means a building, property, or site, or group of buildings, properties, or sites that are either:

a. listed on the National Register of Historic Places or formally determined eligible for listing by the keeper of the National Register of Historic Places, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register of Historic Places, pursuant to 47 C.F.R. Part 1, Appendix C; or

b. [Listed] <u>listed</u> on the New Jersey Register of Historic Places or identified in an authority's master plan adopted pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

"Law" means a federal or State statute, common law, code, rule, regulation, order, or local ordinance, or resolution.

"Make-ready work" means the process of ensuring that an authority pole is in suitable condition to receive a small wireless facility and associated antenna equipment.

"Micro wireless facility" means an antenna facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, no longer than 11 inches.

"Permit" means $\frac{1}{an}$ authorization $\frac{1}{L}$, written or otherwise, $\frac{1}{l}$ required by an authority to perform an action or initiate, continue, or complete a project for the deployment of antenna facilities at a specified location in a right-of-way.

"Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

"Personal wireless service" means "commercial mobile service," "unlicensed wireless services," and "common carrier wireless exchange access services," as those terms are defined pursuant to 47 U.S.C. s.332, ¹[and]¹ "commercial mobile data service," as defined pursuant to 47 U.S.C. s.1401 ¹, and information service provided through wireless fidelity or similar technologies utilizing unlicensed spectrum¹.

"Pole" means a pole in the right-of-way that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, or for the collocation of small wireless facilities. "Pole" shall not mean a: tower, either guyed or self-supporting, built for the sole or primary purpose of supporting wireless equipment other than a small wireless facility; building; billboard; or electric transmission structure.

"Public utility" shall have the same meaning as provided in R.S.48:2-13.

"Rate" means a recurring charge.

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"Right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use, but shall not include a federal interstate highway.

"Small wireless facility" means a facility that meets each of the following conditions: the facility is mounted on a structure 50 feet or less in height, including the antenna or is mounted on a structure no more than 10 percent taller than other adjacent structures or does not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; all other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated ¹antenna ¹ equipment on the structure, is no more than 28 cubic feet in volume; the facility does not require antenna structure registration under 47 C.F.R. Part 17; the facility is not located on tribal lands, as defined pursuant to 36 C.F.R. s.800.16; and the facility does not result in human exposure to radio frequency in excess of the applicable safety standards specified pursuant ¹to ¹ 47 C.F.R. s.1.1307.

"Structure" means a pole, tower, base station, as defined pursuant to 47 C.F.R. s.1.6100, or other building, whether or not it has an existing antenna facility, which is used or is to be used for the provision of personal wireless service.

"Technically feasible" means that, by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design, concealment measures, or site location can be implemented without a ¹material ¹ reduction in the functionality of the small wireless facility.

"Tower" shall have the same meaning as defined pursuant to 47 C.F.R. 1s. 11.6100.

"Wireless infrastructure provider" means any person, including a person authorized to provide telecommunications service in the State, that builds or installs facilities for the provision of wireless service, but that is not a wireless service provider.

"Wireless provider" means a wireless infrastructure provider or a wireless service provider.

"Wireless service" means any services provided to the general public and made available on a non-discriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using '[wireless facilities] an antenna facility'

"Wireless service provider" means a person who provides wireless services.

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"Wireline backhaul facility" means ¹[an above-ground or underground wireline facility used to transport communications data or other electric communications from an antenna facility to a communications network] a physical transmission path, all or part of which is within the right-of-way, used for the transport of communications services or other electronic communications by wire from an antenna facility to a communications network.

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- 3. a. An authority may not enter into an exclusive arrangement with any person or entity for the use of the right-of-way for:
 - (1) the collocation of a small wireless facility;
- (2) the mounting or installation of a small wireless facility on new or replacement poles;
- (3) the installation of associated antenna equipment adjacent to a structure on which a small wireless facility is or will be collocated, mounted, or installed; or
- (4) the installation, operation, marketing, modification maintenance, or replacement of associated poles.
- b. Subject to the provisions of this section, a wireless provider shall have the right, as a permitted use not subject to zoning review or approval, and without the need for '[municipal] authority' consent, '[pursuant to R.S.48:3-19,]' to:
 - (1) collocate small wireless facilities;
- (2) mount or install small wireless facilities on new or replacement poles;
- (3) install associated antenna equipment adjacent to a structure on which a small wireless facility is or will be collocated, mounted, or installed; or
- (4) install, modify, or replace its own poles, or, with the permission of the owner, a third party's poles, associated with a small wireless facility, along, across, upon, and under the right-of-way.

Small wireless facilities, antenna equipment, and poles collocated or installed pursuant to this section shall be installed and maintained as not to obstruct or hinder the usual travel or public safety in a right-of-way or obstruct the legal use of a right-of-way by a public utility.

1 Construction and maintenance by wireless providers shall comply with the National Electrical Safety Code, published by the Institute of Electrical and Electronics Engineers, and all applicable laws and regulations for the protection of underground and overhead public utility facilities.

4. a. A new, replaced, or modified pole installed in a right-of-way after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) for the purpose of collocating, mounting, or installing a small wireless facility shall not exceed 50 feet in height above ground level or '[ten] 10' percent taller than the tallest existing pole in place as of the effective date of P.L. , c.

(C.) (pending before the Legislature as this bill) in the same right-of-way within 500 feet of the new, replaced, or modified pole, whichever is greater.

- b. A new small wireless facility installed in a right-of-way after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) may not extend more than 10 percent above the existing structure on which they are located or 50 feet above ground level, whichever is greater.
- c. A wireless provider shall have the right to collocate, mount, or install a small wireless facility and install, maintain, modify, and replace a pole that exceeds the height limits pursuant to subsections a. and b. of this section along, across, upon, and under the right-of-way, subject to section 3 of P.L., c. (C.) (pending before the Legislature as this bill) and applicable zoning regulations.
- ¹d. A wireless provider shall not apply to install a new pole unless it has determined after diligent investigation that it cannot meet its ²[wireless]² service objectives by collocating on ²[a pre-existing]² an existing² pole or other structure on which:
- (1) the wireless provider has the right to collocate subject to reasonable terms and conditions, including the right to ²pole² mount antenna equipment ²[on a pre-existing pole]²; and
- (2) that collocation would not impose technical limitations or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for that determination.
- e. For applications for new poles in the right-of-way in areas zoned for residential use, the authority may propose an alternate location in the right-of-way within 100 feet of the location set forth in the application, and the wireless provider shall use the authority's proposed alternate location unless the location imposes technical limits or significant additional costs. The wireless provider shall certify that it has made the determination in good faith, based on the assessment of a licensed engineer, and it shall provide a written summary of the basis for that determination. !
- 5. a. An authority may adopt aesthetics requirements governing the deployment of small wireless facilities and associated antenna equipment and poles in a right-of-way, ¹which may include preapproved designs for new poles in specified areas. ¹ subject to the following:
- (1) the aesthetic requirements shall be reasonable, in that they are technically feasible and reasonably directed at avoiding or remedying unsightly or out-of-character deployments, are no more burdensome than those applied to '[other types of] functionally equivalent' infrastructure deployments, and are '[objective and]' published in advance;

(2) any design or concealment measures are not considered a part of the small wireless facility for purposes of the size parameters in the definition of small wireless facility; 'and'

- (3) an authority may deny an application for not complying with an aesthetic requirement only if the authority finds that the denial does not prohibit or have the effect of prohibiting the provision of wireless service ${}^{1}\mathbf{I},\mathbf{I}_{\cdot}^{1}$
- b. Aesthetic requirements applicable to deployment of small wireless facilities on decorative poles and in historic districts shall, in addition to the requirements of subsection a. of this section, comply with the following:
- (1) a wireless provider shall be permitted to collocate small wireless facilities on, 'or' modify '[,]' or replace ',' decorative poles when necessary to deploy a small wireless facility '[. An], provided that an' authority may require the collocation or decorative pole replacement to reasonably conform to the design aesthetics of the original decorative pole or poles '[, provided the aesthetic requirements are technically feasible]'.
- (2) an authority may adopt aesthetic requirements applicable in historic districts that comply with this section.

6. a. A wireless provider shall comply with undergrounding requirements that are consistent with subsection a. of section 5 of P.L., c. (C.) (pending before the Legislature as this bill)

- (1) the authority has required all electric and telecommunications lines to be placed underground by a date certain that is three months prior to the submission of the application;
- (2) a pole the authority allows to remain shall be made available to wireless providers for the collocation of small wireless facilities, and a pole may be modified or replaced by a wireless provider to accommodate the collocation, mounting, or installation of small wireless facilities, in compliance with P.L. , c. (C.) (pending before the Legislature as this bill); and
- (3) subject to the application process established pursuant to section 11 of P.L., c. (C.) (pending before the Legislature as this bill). a wireless provider may install a new pole in the designated area that otherwise complies with P.L., c. (C.) (pending before the Legislature as this bill) when the wireless provider is not able to provide wireless service by collocating on a remaining structure.
- b. For small wireless facilities installed before an authority adopts requirements that electric and telecommunications lines be placed underground, an authority adopting these requirements shall permit:
- (1) a wireless provider to maintain the small wireless facilities in place on any pole not required to be removed, subject to any applicable pole attachment agreement with the pole owner; or

(2) a wireless provider to replace an existing pole within 50 feet of the prior location.

7. ¹[The authority may require a] A¹ wireless provider ¹[to] shall¹ repair all damage to a right-of-way caused by the activities of the wireless provider and ¹[to]¹ return the right-of-way to its functional ¹and aesthetic¹ equivalence before the damage, pursuant to the competitively neutral, reasonable requirements and specifications of the authority. If the wireless provider fails to make the repairs required by the authority within a reasonable time after written notice, the authority may make those repairs and charge the applicable party the reasonable, documented cost of the repairs.

8. A wireless provider shall not be required to replace or upgrade an existing pole except for reasons of structural necessity or compliance with applicable codes. A wireless provider may, with the permission of the pole owner, replace or modify the existing pole, but any replacement or modification shall be consistent with the design aesthetics of the pole being modified or replaced.

9. A wireless provider '[is required to] shall' notify the authority at least 30 days before the abandonment of a small wireless facility. Following receipt of the notice, the authority shall direct the wireless provider to remove all or any portion of the small wireless facility and associated antenna equipment that the authority determines would be in the best interest of 'the' public '[safety]'. If the wireless provider fails to remove the abandoned small wireless facility within 90 days after the notice, the authority may undertake to remove the small wireless facility and recover the actual and reasonable expenses of the removal from the wireless provider, its successors, or assigns.

 10. Except as provided in P.L. , c. (C.) (pending before the Legislature as this bill), an authority may not prohibit, regulate, or charge for the collocation, mounting, or installation of a small wireless facility on a new, modified, or replacement pole, or the installation, modification, or replacement of an associated pole or antenna equipment that may be permitted in P.L. , c. (C.) (pending before the Legislature as this bill).

- 11. a. An authority may require an applicant to obtain a permit for:
- 42 (1) the collocation of a small wireless facility not subject to the 43 provisions of P.L.2011, c.199 (C.40:55D-46.2);
 - (2) ¹the ¹ mounting or installation of a small wireless facility on a new, modified, or replacement pole; or

(3) the installation, modification, or replacement of '[an associated] a' pole or antenna equipment as provided in section 3 of P.L., c. (C.) (pending before the Legislature as this bill).

Each permit issued pursuant to this section shall be of general applicability and shall not apply exclusively to a small wireless facility. Only one application shall be required for all activities associated with a permit issued pursuant to this section.

- b. An authority shall receive and process applications subject to the following requirements:
- (1) small wireless facilities shall be classified as permitted uses and not subject to zoning review or approval if they are located in the right-of-way in any zone;
- (2) an authority may not directly or indirectly require an applicant to perform services or provide goods unrelated to the permit, such as in-kind contributions to the authority including, but not limited to, reserving fiber, conduit, or pole space for the authority;
- (3) an applicant shall not be required to provide additional information to obtain a permit than communications service providers that are not wireless providers, provided that an applicant may be required to include construction and engineering drawings and information demonstrating compliance with the criteria in paragraph (9) of this subsection;
 - (4) an authority may not require:

- (a) the collocation, mounting, or installation of a small wireless facility on any specific pole or category of poles or require multiple antenna facilities on a single pole;
- (b) the use of specific pole types or configurations when installing a new or replacement pole; or
- (c) the underground placement of a small wireless facility or antenna equipment that is or are designated in an application to be pole-mounted or ground-mounted 1, provided that an authority may:
- (i) require, pursuant to section 6 of P.L., c. (C.) (pending before the Legislature as this bill), that a wireless provider place underground fiber that is part of a small wireless facility and not in or on a pole; or
- (ii) prohibit, pursuant to section 6 of P.L., c. (C.) (pending before the Legislature as this bill), ground-mounted antenna equipment¹;
- (5) ¹ subject to the provisions of subparagraph (d) of paragraph (9) of subsection b. of this section, ¹ an authority may not limit the collocation of a small wireless facility or the mounting or installation of a small wireless facility on a new ¹ [, modified,] ¹ or replacement pole by minimum horizontal separation distance requirements from an existing small wireless facility ¹ [or structure] ¹;
- (6) the authority may require an applicant to include an attestation that the small wireless facility '[will] shall' be operational for use by a wireless service provider within one year after the permit issuance

date, unless the authority and the applicant agree to extend this period or a delay is caused by lack of commercial power, communications '[transport]' facilities to the site, or any other factors outside of the applicant's control;

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- (7) within '[ten] 10' days of receiving an application, an authority shall determine and notify the applicant in writing whether the application is complete. If an application is incomplete, an authority shall specifically identify the missing information in writing. The processing deadline provided in paragraph (8) of this subsection shall restart on the date the applicant provides the missing information to complete the application:
- (8) an authority shall process an application in a nondiscriminatory manner and the application shall be deemed approved if the authority fails to approve or deny the application within:
- (a) 60 days of receipt of an application for a permit involving collocation of a small wireless facility using an existing structure; and
- (b) 90 days for an application for a permit involving deployment of a small wireless facility using a new or replacement pole.

¹ If an authority provides written notification to the applicant within 10 days of receiving an application certifying that it is experiencing an unusually high overall level of permitting activity or other circumstances beyond the authority's control that prevents the authority from reviewing and processing the application by the deadline, the processing deadline may be extended automatically for up to 30 days.1

The processing deadline may be tolled by agreement of the applicant and the authority:

- (9) an authority may deny the application for collocation, mounting, or installation of a small wireless facility on a new or replacement pole, or the installation or replacement of an associated pole or antenna equipment that meets the requirements in section 4 of) (pending before the Legislature as this bill), if the authority finds that the proposed work:
- (a) [materially] interferes with the safe operation of traffic control equipment,
- (b) [materially] interferes with sight lines or clear zones for transportation or pedestrians;
- (c) '[materially]' interferes with compliance with the federal "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et seq.), or similar federal or State standards regarding pedestrian access or movement:
- (d) fails to comply with reasonable and non-discriminatory horizontal spacing requirements of general application adopted by ordinance that concern the location of ground-mounted antenna equipment and new poles and which shall not prevent a wireless provider from serving any location;

(e) ¹ [designates the location of a new pole for the purpose of mounting or installing a small wireless facility within seven feet in any direction of an electrical conductor, unless the wireless provider obtains the written consent of the public utility that owns or manages the electrical conductor;

(f)]1 fails to comply with applicable codes; or

 1 [(g)] (f) 1 fails to comply with sections 4, 5, or 6 of P.L. , c. (C.) (pending before the Legislature as this bill);

- (10) the authority shall document the basis for an application denial, including the specific code, rule, or statutory provisions on which the denial was based, and send the documentation to the applicant on or before the day the authority denies an application. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days of the denial without paying an additional application fee. The authority shall approve or deny the revised application within 30 days of resubmission and limit its review to the deficiencies cited in the denial:
- (11) an applicant seeking to collocate, mount, or install more than one small wireless facility within the jurisdiction of a single authority may file a consolidated application for small wireless facilities and associated poles and antenna equipment and receive a single permit for the collocation, mounting, or installation of '[multiple] up to 25' small wireless facilities and the placement of associated poles and antenna equipment '[;],' provided '[, however,] that all small wireless facilities within the consolidated application are substantially the same type and proposed for collocation on substantially the same types of structures;
- (12) an applicant shall not file within a 60-day period, three consolidated applications; or multiple applications that collectively seek permits for a combined total of more than 75 small wireless facilities and associated poles and antenna equipment;
- (13) the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities, poles, or antenna equipment in the same consolidated application. A consolidated application shall be collectively processed in accordance with the procedures in this section. A consolidated application that includes a new or replacement pole deployment shall be subject to a 90-day timeframe for approval;
- '[(12)] (14)¹ installations, mountings, modifications, replacements, and collocations for which a permit is granted pursuant to this section shall be completed by the applicant within one year after the permit issuance date unless the authority and the applicant agree to extend this period, or a delay is caused by the lack of commercial power or communications facilities at the site ¹[.].
- ¹[(13)] (15)¹ approval of an application authorizes the applicant to:

(a) undertake the installation, modification, replacement or collocation of the approved small wireless facility and any associated pole and antenna equipment; and

(b) subject to applicable relocation requirements and the applicant's right to terminate at any time, operate and maintain the small wireless facility and any associated pole and antenna equipment covered by the permit for a period of not less than 10 years, which must be renewed for equivalent durations so long as the facilities comply with the criteria set forth in paragraph (9) of this subsection;

 ${}^{1}[(13)]$ (16) an authority may not institute, either expressly or de facto, a moratorium on:

- (a) filing, receiving, or processing applications; or
- (b) issuing permits or other required approvals, if any, for the collocation, mounting, or installing of a small wireless facility or the installation, modification, or replacement of associated antenna equipment or poles.

¹If the State or another authority has declared an emergency and the State or another authority institutes a temporary moratorium that is generally applicable and competitively neutral, is necessary to address the emergency, disaster, or related public safety needs within the authority's jurisdiction, is targeted to those geographic areas that are affected by the disaster or emergency, and applies only for the duration of declaration of emergency, then the provisions of subparagraphs (a) and (b) of this paragraph shall not apply.

- c. An authority shall not require an application for:
- (1) routine maintenance:
- (2) the replacement of a small wireless facility or antenna equipment '[with a], provided the replacement' small wireless facility or antenna equipment '[that]' is substantially similar 'to' or the same size 'as' or smaller '[as the replacement] than the original small wireless facility or antenna equipment and continues to meet all other requirements of the original permit'; or
- (3) the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing poles, in compliance with the applicable codes.

An authority may require a permit for work pursuant to subsection a. of this section that requires excavation or closure of sidewalks or vehicular lanes within the right-of-way and the permit shall be issued to the applicant on a non-discriminatory basis upon terms and conditions applied to any other person's activities in the right-of-way that require excavation, closing of sidewalks, or vehicular lanes.

12. A person owning, managing, or controlling an authority pole in the right-of-way may not enter into an exclusive arrangement with any person for the right to attach to the pole. A person who purchases or otherwise acquires an authority pole is subject to the

requirements of P.L. , c. (C.) (pending before the Legislature as this bill).

13. An authority shall allow the collocation of a small wireless facility and the installation of associated antenna equipment on an existing authority pole, 'and' the mounting or installation of a small wireless facility and the installation of associated antenna equipment on a replacement authority '[poles] pole,' on non-discriminatory terms and conditions using the standards in section 5 of P.L. , c. (C.) (pending before the Legislature as this bill) and the application requirements in section 11 of P.L. , c. (C.) (pending before the Legislature as this bill).

- 14. a. The rates, fees, and terms and conditions for any makeready work to collocate, mount, or install a small wireless facility on an authority pole and to install associated antenna equipment shall be non-discriminatory, competitively neutral, commercially reasonable, and shall comply with P.L. , c. (C.) (pending before the Legislature as this bill).
- b. The authority shall provide a good faith estimate for any make-ready work necessary to enable the authority pole to support the requested collocation, mounting, or installation by a wireless provider, including authority pole replacement if necessary, within 60 days after receipt of a complete application. Make-ready work including any authority pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant. An authority may require replacement of the authority pole only if it demonstrates that the collocation would make the authority pole structurally unsound.
- c. The person owning, managing, or controlling the authority pole shall not require more make-ready work than required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to pre-existing or prior damage or noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed either actual costs or the amount charged to other communications service providers for similar work and shall not include any revenue or contingency-based consultant's fees or expenses.

15. a. All rates and fees established pursuant to subsection b. of this section shall be a reasonable approximation of the authority's reasonable costs, and shall be applied by the authority in a non-discriminatory manner. An authority may not require a wireless provider to pay any rates, fees, or compensation to the authority or other person other than what is expressly authorized by P.L., c. (C.) (pending before the Legislature as this bill) for the right to use or occupy the right-of-way for the collocation, mounting, or installation of a small wireless facility on a pole in the

right-of-way, or for the installation, maintenance, modification, or replacement of associated antenna equipment or a pole in the right-of-way.

- b. Application fees for any permit issued pursuant to P.L. , c.
 (C.) (pending before the Legislature as this bill) shall not exceed:
- (1) \$500 for a single up-front application for collocation of a small wireless facility that includes up to five small wireless facilities, with an additional \$100 for each small wireless facility included in the same application thereafter;
- (2) \$250 for the modification or replacement of an existing pole, together with the mounting or installation of an associated small wireless facility in the right-of-way; ¹and ¹
- (3) \$1,000 for the installation of a new pole, together with the mounting or installation of an associated small wireless facility in the right of way ¹**I**; and
 - (4) subject to subsection a. of this section, if 1.
- c. Notwithstanding the provisions of any law, rule, regulation, or order to the contrary.¹ an authority '[elects] may elect¹ to charge for use of the right-of-way or the collocation of a small wireless facility on an authority pole in the right-of-way, 'provided, however, that¹ the rate 'for that use¹ shall not exceed '[\$20] \$200¹ per small wireless facility per year for right-of-way access and '[\$100] \$70¹ per authority pole per year for a small wireless facility collocated, mounted, or installed on an authority pole. The rates established pursuant to this paragraph, together with a one-time application fee, shall be the total compensation that the wireless provider is required to pay the authority for the deployment of each small wireless facility in the right-of-way and any associated antenna equipment or pole.

- 16. a. An authority shall not have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of a small wireless facility located in an interior structure or upon the site of a campus, stadium, or athletic facility not owned or controlled by the authority, other than to require compliance with applicable codes.
- b. Except as it relates to small wireless facilities subject to the permit and fee requirements established pursuant to P.L., c. (C.) (pending before the Legislature as this bill) or otherwise specifically authorized by State or federal law, an authority shall not adopt or enforce any regulations or requirements on the placement or operation of communications facilities in the right-of-way by a communications service provider authorized by federal, State, or local law to operate in a right-of-way, regulate any communications services, or impose or collect any tax, fee, rate, or charge for the provision of additional communications service over the communications service provider's communications facilities in a right-of-way.

17. a. An authority may adopt an ordinance that makes available 2 to wireless providers rates, fees, and other terms and conditions that comply with P.L. , c. (C.) (pending before the Legislature as 3 4 this bill). '[Pursuant to the provisions of this section, in] In' the 5 absence of an ordinance 'Ithat fully complies with) (pending before the Legislature as this bill) and 6 P.L., c. (C. 7 until a compliant ordinance is adopted], a wireless provider may 8 install and operate a small wireless facility and any associated poles 9 and antenna equipment under the requirements of P.L. 10) (pending before the Legislature as this bill). An authority C. 11 may not require a wireless provider to enter into an agreement to 12 implement P.L., c. (C.) (pending before the Legislature as 13 this bill), but agreements are permissible if voluntary and non-14 discriminatory b. An ordinance or agreement 'or any provision thereof' that does 15 16 not '[fully]' comply with P.L., c. (C.) (pending before the Legislature as this bill) shall apply only to small wireless facilities and 17 any associated poles and antenna equipment that were operational 18 19 before the effective date of P.L., c. (C.) (pending before the 20 Legislature as this bill) and shall be deemed invalid and unenforceable beginning on the 181st day after the effective date of 21 22) (pending before the Legislature as this bill) P.L., c. (C. unless amended to '[fully]' comply with P.L. , c. (C. 23 24 (pending before the Legislature as this bill). If an ordinance or 25 agreement of any provision thereof is invalid pursuant to this 26 subsection, small wireless facilities and associated poles and antenna 27 equipment that became operational before the effective date of P.L. 28) (pending before the Legislature as this bill), pursuant to 29 the ordinance or agreement, may remain installed and be operated under the requirements of 1the remaining valid portions of the 30 ordinance or agreement or P.L., c. (C. 31) (pending before the Legislature as this bill) 1, as applicable 1 32 33 c. '[An] Any provision of an' agreement or ordinance that 34 applies to small wireless facilities and associated poles and antenna 35 equipment that becomes operational on or after the effective date of 36 P.L., c. (C.) (pending before the Legislature as this bill) is 37 invalid and unenforceable unless it '[fully]' complies with P.L., c. 38 (C.) (pending before the Legislature as this bill). In the absence of 39 an ordinance or agreement that '[fully]' complies with P.L., c. 40 (C.) (pending before the Legislature as this bill), a wireless 41 provider may install and operate a small wireless facility and 42 associated poles and antenna equipment in a right-of-way pursuant to 43 the requirements of the remaining valid portions of the ordinance or agreement or P.L., c. (C. 44) (pending before the Legislature as

this bill) 1, as applicable 1

18. a. An authority may adopt reasonable indemnification, insurance, and bonding requirements related to a small wireless facility and associated pole permits and antenna equipment pursuant to the requirements of this section and section 6 of P.L. , c. (C.) (pending before the Legislature as this bill).

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- 6 '[An authority shall not require a wireless provider to 7 indemnify and hold the authority and its officers and employees 8 harmless against any claims, lawsuits, judgments, costs, liens, 9 losses, expenses, or fees, except when a court of competent 10 jurisdiction has found that the negligence of the wireless provider 11 while installing, repairing, or maintaining a small wireless facility 12 or associated poles and antenna equipment caused the harm that created the claims, lawsuits, judgments, costs, liens, losses, 13 expenses, or fees] ²[A] Any ² wireless provider that owns or 14 operates small wireless facilities or ²[public]² utility poles in the 15 16 right-of-way shall indemnify, protect, defend, and hold the 17 authority and its elected officials, officers, employees, agents, and 18 volunteers harmless against any and all claims, lawsuits, judgments, 19 costs, liens, losses, expenses, fees including reasonable attorney 20 fees and costs of defense, proceedings, actions, demands, causes of 21 action, liability, and suits of any kind and nature, including, but not 22 limited to, personal or bodily injury or death, property damage or 23 other harm for which recovery of damages is sought, to the extent 24 that it is caused by the negligence of the wireless provider who owns or operates small wireless facilities or ²[public]² utility poles 25 26 in the right-of-way, any agent, officer, director, representative, 27 employee, affiliate, or subcontractor of the wireless provider, or 28 their respective officers, agents, employees, directors, or 29 representatives while installing, repairing, operating, or maintaining 30 facilities in rights-of-way1.
 - c. ¹[An authority may require a wireless provider to have in effect insurance coverage consistent with this section, so long as the authority imposes similar requirements on other right-of-way users and the requirements are reasonable and non-discriminatory.
 - An authority may not require a wireless provider to obtain insurance naming the authority or its officers and employees an additional insured.
- 38 (2) An authority may require a wireless provider to furnish 39 proof of insurance, if required, prior to the effective date of any 40 permit issued for a small wireless facility work] Except for a 41 wireless provider with an existing agreement to occupy and operate 42 in the rights-of-way, during the period in which the wireless provider's facilities are located on the ²[authority's] authority² 43 44 improvements or rights-of-way, the authority may require the 45 wireless provider to carry, at the wireless provider's own cost and 46 expense, the following insurance:

S2674 [2R] SWEENEY 19

(a) property insurance for its property's replacement cost against all risks;

(b) workers' compensation insurance, as required by law; or

(c) commercial general liability insurance with respect to its activities on the authority improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of authority improvements or rights-of-way, including coverage for bodily injury and property damage. An authority may require a wireless provider to include the authority as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the authority in a commercial general liability policy as reasonably required by the authority.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirements required by an authority. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the naming of additional insureds under this section. A wireless provider that elects to self-insure shall provide to the authority evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limits required by the authority.

- d. ¹[An authority may adopt bonding requirements for small wireless facilities if the authority imposes similar requirements in connection with permits issued for other right-of-way users.
 - (1) The purpose of the bonds shall be to:
- (a) provide for the removal of abandoned or improperly maintained small wireless facilities, including those that an authority determines need to be removed to protect public health, safety, or welfare;
- (b) restoration of the right-of-way in connection with removals as provided for in P.L. , c. (C.) (pending before the Legislature as this bill); or
- (c) recoup rates or fees that have not been paid by a wireless provider in over 12 months, so long as the wireless provider has received reasonable notice from the authority of any non-compliance pursuant to P.L., c. (C.) (pending before the Legislature as this bill) and given a reasonable opportunity to cure.
- (2) Bonding requirements may not exceed \$200 per small wireless facility. For wireless providers with multiple small wireless facilities within the jurisdiction of a single authority, the total bond amount across all facilities may not exceed \$10,000, which may be combined into one bond instrument] An authority may impose reasonable and non-discriminatory requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities or damage to the right-of-way or authority property caused
- 47 by the wireless provider or its agent 1.

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19. a. Nothing in P.L. , c. (C.) (pending before the Legislature as this bill) shall be construed to allow any person or entity to provide cable services regulated pursuant to 47 U.S.C. s.521 through 47 U.S.C. s.573 without compliance with all laws applicable to those cable operators, nor shall it be interpreted to impose any new requirements on cable operators for the provision of cable service in this State.

- b. Nothing in P.L., c. (C.) (pending before the Legislature as this bill) shall be construed to allow any entity to provide communications services without compliance with all laws applicable to communications service providers, nor shall it be construed to authorize the collocation, installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, in the right-of-way, other than a small wireless facility.
- c. Nothing in P.L. , c. (C.) (pending before the Legislature as this bill) shall authorize the State or any political subdivision thereof, including an authority, to require small wireless facility deployment or to regulate wireless service.
- d. Nothing in P.L., c. (C.) (pending before the Legislature as this bill) shall '[apply to poles owned by an investorowned public utility, except as it concerns a wireless provider's access to a right-of-way and permits for the collocation, mounting, or installation of a small wireless facility on investor-owned public utility poles pursuant to a pole attachment agreement between the wireless provider and the investor-owned public utility authorize a person to collocate a small wireless facility on property owned by a public utility without consent of the public utility nor be construed to impact, modify, or supersede any construction standard, engineering practice, tariff provision, collective bargaining agreement, contractual obligation or right, or federal or State law or regulation relating to facilities or equipment owned or controlled by a public utility or its affiliate, an electric cooperative, or an independent electric transmission company, that is not a wireless provider 2, nor shall P.L., c. (C.) (pending before the Legislature as this bill) be construed to apply to a public utility's use of its own poles, facilities, or both for communications associated with its public utility operations2

20. A court of competent jurisdiction shall have jurisdiction to determine disputes arising pursuant to P.L., c. (C.) (pending before the Legislature as this bill). Pending resolution of a dispute concerning rates for collocation, mounting, and installation of small wireless facilities on authority poles in the right-of-way and the installation of associated antenna equipment, the authority owning or controlling the pole shall allow the collocating person or entity to collocate at annual rates established pursuant to section 15 of P.L., c. (C.) (pending before the Legislature as this

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- bill), with rates to be reconciled upon final resolution of the dispute.
- 2 A dispute shall be pursued in accordance with accelerated docket or
- 3 complaint procedures, where available.

- 5 21. This act shall take effect on the first day of the seventh
- 6 month next following enactment.







April 18, 2023

The Honorable Cathy McMorris Rodgers Chairman House Energy & Commerce Committee 2125 Rayburn House Office Building Washington, DC 20515

The Honorable Bob Latta Chairman Subcommittee on Telecommunications & Technology House Energy & Commerce Committee 2125 Rayburn House Office Building Washington, DC 20515 The Honorable Frank Pallone Ranking Member House Energy & Commerce Committee 2123 Rayburn House Office Building Washington, DC 20515

The Honorable Doris Matsui Ranking Member Subcommittee on Telecommunications & & Technology House Energy & Commerce Committee 2123 Rayburn House Office Building Washington, DC 20515

Dear Chairman Rodgers, Ranking Member Pallone, Chairman Latta, and Ranking Member Matsui:

On behalf of the American Public Power Association (APPA), National Rural Electric Cooperative Association (NRECA), and Utilities Technology Council (UTC), we write to express our opposition to the draft proposal being discussed by the committee, titled the "Fair Access to Internet Ready Poles (FAIR Poles) Act." APPA, NRECA, and UTC believe that this proposal is a thinly veiled attempt to have not-for-profit electric utilities subsidize for-profit entities' infrastructure.

APPA is the national trade organization representing the interests of the nation's 2,000 not-for-profit, community-owned electric utilities. Public power utilities are located in every state except Hawaii. They collectively serve over 49 million people. Public power utilities are load-serving entities, with the primary goal of providing the communities they serve with safe, reliable electric service at the lowest reasonable cost, consistent with good environmental stewardship.

NRECA is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. America's not-for-profit electric cooperatives are owned by the people that they serve and comprise a unique sector of the electric industry. From growing regions to remote farming communities, electric cooperatives power 1 in 8 Americans and serve as engines of economic development for 42 million Americans across 56 percent of the nation's landscape.

UTC is the international trade association for the telecommunications and information technology interests of electric, gas, and water utilities and other critical infrastructure industries. UTC's members own, maintain, and operate extensive communications systems that they use to support the safe, reliable, and secure delivery of essential energy and water services. UTC advocates for policies to promote utilities' communications systems and protect utility critical infrastructure.

This draft proposal would amend section 224 of the Communications Act to provide that the current exemption public power utilities and electric cooperatives have from Federal Communications Commission (FCC) jurisdiction over pole attachments would not apply to entities that receive certain federal broadband assistance. The narrative for offering this proposal is that broadband attachers are

having difficulty spending federal broadband funding they have recently received because attachment rates are making deployment costs too high or that utilities are making access to poles too difficult by requiring recovery of pole replacement costs. These assertions are false and essentially imply that not-for-profit electric utilities are making it difficult for their communities to receive broadband service. That premise couldn't be further from the truth given such not-for-profit utilities are owned by their customers and want them to have essential broadband services.

Congress first addressed pole attachments in the Pole Attachment Act of 1978, which added section 224 to the Communications Act, to require the FCC to establish subsidized rates for pole attachments for the then-new cable industry. Under the law, public power utilities and rural electric cooperatives were exempted from this requirement "because the pole attachment rates charged by municipally owned and cooperative utilities [were] already subject to a decision-making process based upon constituent needs and interests." This exemption continued through multiple telecommunications law reform efforts, including the enactment of the Telecommunications Act of 1996, because Congress maintained that the existing process is appropriate and adequate.

Public power utilities and electric cooperatives were created to serve communities that were hard to reach, impoverished, or were too expensive to be served by for-profit entities with reliable electric service. That same dynamic exists now in broadband deployment for our communities. The economics of deploying broadband infrastructure in rural areas with low population densities and difficult terrain is cost-intensive and presents little opportunity for return on investment. APPA, NRECA, and UTC strongly support the goals of ensuring every American has access to broadband service. However, this legislation would ask not-for-profit electric utilities and their customers to subsidize for-profit companies' infrastructure build-out

Electric utilities must balance their own need to maintain and operate their utility systems in a safe, reliable, and affordable manner while also addressing the often-competing needs of a variety of attaching communications entities. Congress has repeatedly recognized that federal pole attachment regulation is unnecessary for public power and electric cooperative pole owners because they are owned by their customers, the same customers that would benefit from communications services provided over the facilities attached to their poles. Not-for-profit electric utilities have every incentive to apportion the costs of constructing and maintaining the pole attachments in an equitable manner among attaching entities.

This legislative proposal is nothing more than an effort to weaken or eliminate the exemption in section 224 of the Communications Act. Modifying or eliminating the exemption will not result in any significant increases in broadband deployment, adoption, and use. Instead, it will merely result in not-for-profit electric utility customers subsidizing for-profit telecommunications and cable companies.

Thus, APPA, NRECA, and UTC oppose this draft legislation, which would weaken or eliminate the exemption in section 224 for consumer-owned poles.

Thank you for your time and consideration.

Sincerely,

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Desmarie Waterhouse Senior Vice President of Advocacy and Communications & General Counsel American Public Power Association Louis Finkel Senior Vice President of Government Relations National Rural Electric Cooperative Association

Brett Killbourne Senior Vice President Policy & General Counsel Utilities Technology Council

Bron Kllown

The Honorable Frank Pallone

House Energy & Commerce Committee

Subcommittee on Telecommunications

House Energy & Commerce Committee

2123 Rayburn House Office Building

2123 Rayburn House Office Building

Ranking Member

& Technology

Washington, DC 20515

The Honorable Doris Matsui
Ranking Member

Washington, DC 20515



The Honorable Cathy McMorris Rodgers

Chairman House Energy & Commerce Committee 2125 Rayburn House Office Building Washington, DC 20515

The Honorable Bob Latta

Chairman Subcommittee on Telecommunications & Technology House Energy & Commerce Committee 2125 Rayburn House Office Building Washington, DC 20515

April 19, 2023

Dear Chairman Rodgers, Ranking Member Pallone, Chairman Latta, and Ranking Member Matsui:

As you may know, Connect the Future (CTF) works closely with a wide range of rural leaders in communications, small business, tele-medicine, precision agriculture, distance learning, and other fields to drive progress on broadband deployment and access. We appreciate the ongoing work by members of the Energy & Commerce Committee to address obstacles – such as limitations on access to utility poles – that stand in the way of swift broadband deployment to communities that remain unserved.

Unfortunately, some utility pole owners have sought to defend the status quo by mischaracterizing efforts to address pole-related barriers as an unfair subsidy for rural broadband projects. That premise could not be further from the truth. In reality, the outdated process of adding new broadband infrastructure to existing poles is creating needless hurdles that drive up costs and impedebroadband deployment to the communities that need it most.

While some pole owners are great partners that want to accelerate broadband construction to their communities, others impose unnecessary delays and costs into the process used to attach broadband lines to poles. This behavior undermines predictability, slows progress, and can allow one party to use its monopoly on pole ownership to thwart competition. It also can lead to disputes that further slow and shift resources away from deploying broadband, or even derail projects entirely (See: Fights Over Rural America's Phone Poles Slow Internet Rollout, Wall Street Journal, March 12, 2023).

While the Federal Communications Commission (FCC) has authority to guarantee predictable access to poles as it relates to investor-owned utilities, the same standards do not apply to municipalities and cooperatives, who control access to many rural poles.

That is why we support the Committee's <u>consideration of solutions</u>, including the Fair Access to Internet Ready Poles (FAIR Poles) Act, that would help to standardize permitting timelines, and accelerate the resolution of pole attachment disputes to speed broadband deployment and focus government funding on building broadband networks.

CONNECT THE FUTURE

Again, thank you for your time and attention on this important issue. CTF looks forward to following your efforts, and we stand ready to serve as a resource as you continue the important work of expanding rural broadband access and bridging our nation's digital divide.

Sincerely,

Zach Cikanek, Connect the Future

Zachary Charek









April 19, 2023

The Honorable Bob Latta
Chairman, Communications and Technology Subcommittee
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Latta, Vice Chairman Carter, and Ranking Member Matsui:

On behalf of the nation's counties, cities, towns and villages, the National League of Cities, United States Conference of Mayors, National Association of Counties and the National Association of Telecommunications Officers and Advisors thank the Committee for its attention to the matter of removing barriers to broadband deployment. As the national associations representing elected and appointed local government officials, we appreciate the opportunity to provide input on this important topic.

As our federal agencies embark on the most ambitious one-time federal investment ever made in broadband infrastructure and adoption through the programs created by COVID relief programs and the Bipartisan Infrastructure Law, it is critical that we ensure the value of these funds is maximized.

Local leaders are eager to partner with state and federal agencies to realize our shared goal of affordable, high-quality broadband access for every household, community anchor, and business. We are committed to assisting Congress in the successful deployment of broadband infrastructure and services throughout this nation, and we stand willing to provide its assistance and support as a resource in this regard.

Local governments have been partners with both the wireline and wireless industries in local infrastructure deployment successfully through decades of evolving technical deployments. We continue to be the industries' partner in bringing about such deployments. Congress need not act in this area, and certainly not before local government is given the opportunity to show why such actions are both unnecessary and unconstitutional.

We support legislation to remove barriers to local investment in broadband infrastructure, such as the Community Broadband Act (H.R. 2552). Residents in every state deserve the opportunity to decide locally whether public investment in or ownership of broadband infrastructure is the right choice for their community. Having these options available ensures that federal, state, and local infrastructure investments promote consumer choice, competition, and innovation.

We also support efforts to appropriately speed infrastructure deployment on federal lands and minimize red tape for projects requiring federal permits, an issue that impacts rural communities and gateway communities to natural recreation areas in particular. We applaud ongoing and future efforts to promote interagency coordination and collaboration on program requirements and

application processes, which can help smaller, less-resourced communities apply for and successfully obtain federal funding and financing opportunities.

As the level of government closest to the people, we oppose heavy-handed federal overreach into local land use, permitting, and franchise negotiation decisions. Many of the bills the Subcommittee will consider during this hearing would preempt or undermine the property rights of local governments and local governments' police powers to protect and preserve the safety, well-being, and aesthetics of their communities, which Congress and the Constitution have long recognized. Congress has historically recognized these rights in Sections 224, 253 and 332 of the Telecommunications Act.

These authorities are critical to conduct responsible stewardship of public property, protect public safety, and preserve the rights of residents as consumers of broadband services and neighbors to the infrastructure that makes connectivity possible. We fear the unintended consequence of some of these bills will be to impose costs on local governments, burdens on our taxpayers, interference with public safety and otherwise harm local protections that are the heart of localism without substantively improving broadband deployment.

We look forward to partnering with the members of the Committee to eliminate the digital divide. The future social and economic success of our communities depends on our collective efforts.

Sincerely,

Clarence Anthony CEO and Executive Director National League of Cities

Matthew D. Chase CEO/Executive Director National Association of Counties tom cochran

Tom Cochran CEO and Executive Director The United States Conference of Mayors

Tonya Rideout Executive Director

The National Association of Telecommunications
Officers and Advisors

Members of the House Energy and Commerce Committee

If you have any questions, please contact:

The National League of Cities (NLC) is the voice of America's cities, towns and villages, representing more than 200 million people. NLC works to strengthen local leadership, influence federal policy and drive innovative solutions. Contact: Angelina Panettieri, Legislative Director for Information Technology and Communications, at 202-626-3196 or panettieri@nlc.org.

The National Association of Counties (NACo) provides essential services to the nation's 3,069 counties, serving nearly 40,000 county elected officials and 3.6 million county employees. Since 1935, NACo unites county officials to advocate county priorities in federal policymaking and optimize county and taxpayer resources and cost savings while promoting exemplary county policies and practices. Contact: Seamus Dowdall, Assoc. Legislative Director, Telecommunications & Technology at 202-942-4212 or sdowdall@naco.org.

The **United States Conference of Mayors (USCM)** is the official nonpartisan organization of cities with populations of 30,000 or more. There are 1,400 such cities in the country today. Each city is represented in the Conference by its chief elected official, the mayor. The Conference's Task Forces examine and act on issues that demand special attention such as civic innovation, exports, hunger and homelessness, and brownfields, transportation and technology. Contact: David W. Burns, Assistant Executive Director, at 202-861-6765 or dburns@usmayors.org.

The National Association of Telecommunications Officers and Advisors' (NATOA) 400 members are local government staff and their advisors offering a wealth of experience and expertise on public rights-of-way management telecom work and communications issues on behalf of local government related to broadband, wireless, cable television, public, educational, and government (PEG) access, public safety communications, consumer protection and PROW management. Contact: Mike Lynch, Legislative Affairs Director, 703-519-8035, x202 or <a href="mailto:mkl-mkl-mailto:

Congress of the United States Washington, DC 20515

August 05, 2022

The Honorable Pete Buttigieg Secretary U.S. Department of Transportation 1200 New Jersey Ave, SE Washington, DC 20590 The Honorable Alan Davidson
Assistant Secretary of Commerce for
Communications and Information
National Telecommunications and Information
Administration
1401 Constitution Avenue, NW
Washington, DC 20230

Jennifer Granholm Secretary U.S. Department of Energy 1000 Independence Ave. SW Washington DC 20585

Dear Secretary Buttigieg, Assistant Secretary Davidson, and Secretary Granholm,

The Infrastructure Investment and Jobs Act (IIJA) makes transformative investments in electric vehicle (EV) charging infrastructure and will help meet the Administration's critical goal of 500,000 chargers by 2030 to ensure that EVs are accessible to all Americans. As federal agencies, states, and relevant stakeholders develop plans for a robust electric vehicle (EV) charging network across the country, we urge you to consider the connectivity requirements for EV supply equipment (EVSE) as well as the benefits of co-locating EVSE with infrastructure that can also be utilized to deploy broadband.

EV charging access has long been lacking in underserved communities. In 2019, the Department of Energy (DOE) found that 80 percent of EV owners charge in their own homes. Although home chargers are the most used type of chargers in EV adoption, apartment residents are less likely to have access to at-home chargers. This disparity poses a particular challenge to lower-income households and communities of color, who are more likely to live in multi-unit housing. Similar challenges exist in rural areas, where limited electric distribution exacerbates range anxiety, the concern that vehicles will not be able to travel the distance needed. IIJA addresses these equity concerns by including \$2.5 billion to support, among other things, rural charging and increase EV charging access in disadvantaged communities. Additionally, IIJA directs \$5 billion to the National Electric Vehicle Infrastructure (NEVI) Formula Program, resulting in \$7.5 billion to build a national electric vehicle charging network.

In its original guidance, the NEVI Formula Program requires state agencies deploying EVs to have a connected charger network to facilitate data collection, accessibility, and reliability. These

connectivity requirements for EV charging infrastructure often require broadband access, which can be sparse in remote areas. To meet the 97 percent reporting standards of the NEVI Formula Program, stakeholders and agencies must address the broadband access challenges in rural and underserved communities.

Digital equity disparities exist in areas where access to broadband is non-existent or unaffordable and disproportionately affects rural areas and communities of color. A Pew Research Center report showed that 34 percent of Black households and 39 percent of Latino households do not have wired broadband connection. In addition to this, the Census Bureau found that 33 percent of Native Americans lack a broadband subscription, and 47 percent of those living on tribal lands lack broadband availability altogether. The IIJA acknowledged these disparities and provided \$65 billion for broadband expansion, including grants for internet service expansion in unserved and underserved areas.

In light of the national electric vehicle charging network's connectivity requirements, the persistent digital divide, and EV charging infrastructure disparities across the nation, we encourage you to coordinate IIJA broadband and EV charging infrastructure efforts to encourage co-location of EVSE with telecommunications infrastructure when and where appropriate. The IIJA also included strong prevailing wage protections and preferences to ensure federal funding supports high-skilled, well-paying jobs. We urge you to include and build upon these bedrock protections during deployment to maximize meaningful opportunities for American workers. This approach can address multiple national priorities simultaneously and avoid duplicative efforts, maximizing IIJA's wide-reaching equity mission.

We look forward to continuing working with you on IIJA funding implementation and finding holistic equity solutions for communities across the nation.

Sincerely,

Doris Matsui

Member of Congress

Emanuel Cleaver, II Member of Congress Anna G. Eshoo Member of Congress

Dina Titus

Member of Congress

Rasheda Slail Rashida Tlaib Member of Congress

Jared Huffman Member of Congress

Alan Lowenthal Member of Congress Mark DeSaulnier Member of Congress

Member of Congress

Mikie Sherrill

Member of Congress



April 14, 2023

Honorable Lizzie Fletcher Member of Congress 346 Cannon House Office Building Washington, DC 20515

Dear Congresswoman Fletcher:

On behalf of NATE: The Communications Infrastructure Contractors Association, we are writing to commend you for introducing H.R. 1241, the "Broadband Incentives for Communities Act". NATE is pleased to support this legislation.

NATE is a non-profit trade association dedicated to providing a unified voice for companies in the diverse tower and communications infrastructure industries. Today the Association represents over 1,145 member companies that construct, service, or maintain hundreds of thousands of communications towers and next generation wireless and broadband networks throughout the United States. NATE represents over 139 member companies in the state of Texas, including locations in the 7th District, which employ skilled workers and communications professionals and support the vital communications and public safety needs throughout their communities.

NATE member contractors cannot build or deploy until they get the green light, and the "Broadband Incentives for Communities Act" would play a vital role in expediting the review and approval of zoning or permitting applications that facilitate the deployment of broadband infrastructure. Through an NTIA established grant program, local and tribal governments would be provided more resources and technology to facilitate the processing of applications more efficiently.

NATE encourages members of the House Energy & Commerce Committee to support the "Broadband Incentives for Communities Act" to move this needed legislation forward.

Sincerely,

Todd Schlekeway NATE President & CEO

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www.natehome.com

INCOMPAS CEO Chip Pickering released the following statement in support of Congresswoman Lizzie Fletcher's Broadband Incentives for Communities Act.

We live in a world where people are more reliant on connectivity than ever before. The internet allows you to get a checkup from the doctor in the comfort of your living room, enables students to learn and get an education at the click of a button, allows small businesses to sell their goods across the globe, and so much more. The possibilities are endless. Connectivity is no longer a luxury, it is a necessity.

With the historic infusion of resources to connect America, it is critical that Congress passes common sense solutions to ensure taxpayer dollars are used effectively and efficiently. Congresswoman Fletcher's bill is the type of legislation that we need to support local officials as they begin to deploy future-focused, competitive networks.

By providing the experts in the state broadband offices with the resources they need to build out their offices, they will be better equipped to facilitate and expedite the deployment process. This bill will not only maximize the impact of federal dollars, but it will also ensure Americans across the country have access to competitive, fast networks. INCOMPAS fully supports this critical piece of legislation and looks forward to continuing to work with Congress and state and local officials to streamline the deployment of broadband networks and bridge the digital divide.

About INCOMPAS

INCOMPAS, the internet and competitive networks association, is the leading trade group advocating for competition policy across all networks. INCOMPAS represents Internet, streaming, communications and technology companies large and small, advocating for laws and policies that promote competition, innovation and economic development. Learn more at

www.incompas.org or follow us on Twitter @INCOMPAS or @ChipPickering.

FOR IMMEDIATE RELEASE



CCA Statement on Congresswoman Fletcher's Reintroduction of Legislation to Help Communities Expand Broadband Infrastructure

Washington, D.C., April 19, 2023 – Congresswoman Lizzie Fletcher (TX-07) has reintroduced H.R. 1241, the Broadband Incentives for Communities Act, which would create a grant program to provide local governments with the resources to facilitate, modernize, and streamline their permitting processes to promote broadband upgrades and deployment.

CCA President & CEO Tim Donovan released the below statement on the reintroduction of the act:

"I thank Congresswoman Lizzie Fletcher for her leadership and introducing the Broadband Incentives for Communities Act. Creating a program to help local officials increase their capacity to process applications for wireless deployments can go a long way to support bridging the digital divide and expanding and upgrading wireless networks. Moreover, with new broadband funding programs online or becoming available moving forward, it is important to make sure that permitting issues can be addressed in a timely manner. I commend the reintroduction of the Broadband Incentives for Communities Act and urge lawmakers to support efforts to improve the permitting process that lead to positive outcomes for local officials, industry, and ultimately consumers."

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About Competitive Carriers Association

Competitive Carriers Association (CCA) is the leading association for competitive wireless providers and stakeholders across the United States. Members range from small, rural carriers serving fewer than 5,000 customers to regional and nationwide providers serving millions of customers, as well as vendors and suppliers that provide products and services throughout the wireless communications ecosystem. Visit CCA on the web at ccamobile.org.

Media Contact

Doris Sump Competitive Carriers Association 202-747-0745 dsump@ccamobile.org

 ${\tt OLD\ COPY\ https://www.ccamobile.org/cca-statement-on-legislation-to-help-communities-expand-broadband-infrastructure}$

Responses to Questions for the Record

Michael Romano Executive Vice President NTCA—The Rural Broadband Association

House Energy and Commerce Committee
Subcommittee on Communications and Technology
"Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment"
April 19, 2023

Q1 from the Honorable Russ Fulcher

When deploying on previously disturbed federal lands, do providers still need to submit environmental and historical preservation reviews?

Answer from Michael Romano

The deployment and upgrade of broadband networks can be severely delayed due to federal environmental reviews required pursuant to the National Environmental Policy Act ("NEPA"). This can even be the case when the installation of wireline or wireless communications facilities takes place entirely on previously disturbed federal lands. The same is true for the historic preservation/Tribal consultation processes required by the National Historic Preservation Act ("NHPA") for these same actions. Importantly, this can also be true when a project does not touch federal lands: a federal grant given to a provider by the Rural Utilities Service, for example, is subject to NEPA as a "major federal action" and to NHPA due to being a "federal undertaking."

That said, federal agencies can adopt what are called "categorical exclusions" (or "CEs") from NEPA. Pursuant to 40 CFR § 1501.4, federal agencies can adopt a CE for certain "categories of actions that normally do not have a significant effect on the human environment, and therefore do not require preparation of an environmental assessment or environmental impact statement." A CE for a project that involves installation of broadband facilities entirely in a previously disturbed right-of-way ("ROW"), for example, is one possible example. Applications of CEs, however, are not as simple as they may appear at first for several reasons.

<u>First</u>, pursuant to the regulation mentioned above, CEs are only applicable to NEPA. Thus, a provider can utilize the CE to streamline the NEPA process but still be required to comply with NHPA processes even for previously disturbed lands. NTCA members have indicated that NHPA processes are often more time-consuming and expensive to complete that the NEPA reviews, meaning that NHPA review requirements can effectively moot any timing benefits that might otherwise be realized through a CE from NEPA review.

<u>Second</u>, CEs are a *streamlined* review process, and thus should not be seen as freeing providers from reviews altogether. Indeed, an agency will initially still need to review a project to determine if it fits within the CE.

<u>Third</u>, NEPA regulations explicitly state that if "an agency determines that a categorical exclusion identified in its agency NEPA procedures covers a proposed action, the agency shall evaluate the action for extraordinary circumstances in which a normally excluded action may have a significant effect." This means that a deployment project planned by a provider and conceived of in a way to utilize a CE may nonetheless be subjected to an environmental

^{1 40} CFR § 1501.4(a).

² Id., §1501.4(b).

assessment or environmental impact statement if agency staff determine that extraordinary circumstances³ mean the project will indeed have an impact on the environment.

Q2 from the Honorable Russ Fulcher

I appreciate that you support my bill, the Reducing Barriers to Broadband on Federal Lands Act. You noted my concerns over the amount of landlocked federal land that can be an obstacle to getting broadband to people. As you note, correct, we are also trying to put "puzzle pieces" together where we are crossing federal land with a "private right-of-way," then some infrastructure and so on.

Can you expand upon your testimony and background that tells us the "footprint" won't generally be as heavy, given these projects are often upgrades of existing networks? Is it simply a matter of tracking previous wire that's been laid, or something along these lines?

Answer from Michael Romano

It is correct that placing facilities in previously disturbed earth and ROWs should have little to no impact on the environment or lands subject to NHPA, particularly when there is no increase in the size of, or expansion of, the facility within the ROW. Nonetheless, NTCA members have reported being required, for example, to undertake NEPA and NHPA reviews to install fiber alongside a recently upgraded and expanded federal highway. It would seem that a broadband provider trenching fiber adjacent to a recent highway project should be unlikely to damage anything of significance that NEPA and/or NHPA would be designed to protect. Of course, certain remediation steps are necessary (replanting grass, for example), but given their proximity to major highway construction efforts, these certainly would not seem to rise to the level of the types of longer-term impacts to the environment or historically or Tribally significant areas.

³ As one example, NTIA recently proposed to adopt several CEs for the broadband provisions of the 2021 Infrastructure Investment and Jobs Act. The CEs would not apply if a proposed project fell within several broadly defined "extraordinary circumstances." Those can see be seen on page 19094 of this document: https://www.federalregister.gov/documents/2023/03/30/2023-06575/national-environmental-policy-act-procedures-and-categorical-exclusions.

Q3 from the Honorable Russ Fulcher

In response to RAY BAUM's Act, a bipartisan law that this Committee passed unanimously in 2018 (Division P of the Consolidated Appropriations Act of 2018) the National Telecommunications and Information Administration has published a report that provides recommendations on how Federal agencies can improve or streamline their processes for reviewing broadband installation applications.

In May 2022, the Biden administration submitted the final version of this report, which in part identified that since the Biden administration, Federal agencies are now taking steps to quote, "prioritiz[e] or streamlin[e] construction permits in previously disturbed rights-of-way.... It goes on to state that Federal property-managing agencies apply "categorical exclusions" to streamline and expedite environmental reviews in areas that the agency has determined do not have a significant impact on the environment.

Do you agree with the Biden administration and with the Republicans on this Committee that we should streamline the environmental review processes in these previously disturbed areas, and if so, why?

Answer from Michael Romano

In my testimony, I provided several examples of the kinds of delays that NTCA members have faced with respect to NEPA and/or NHPA reviews. Many of these delays – some of which can persist for a year or longer – were associated with projects within previously disturbed areas. As I observed at the hearing, it appears that Federal agencies and other permitting offices are overcome by the requests and applications before them now, leading to the kinds of delays I referenced.

Without proactive planning and concrete action, issues of this kind could become more severe and the problems exacerbated in coming years. Particularly as private investment ramps to meet ever-increasing broadband demand, and as the largest broadband deployment funding program in our nation's history launches to amplify and augment these industry efforts, we are at a critical juncture in terms of our ability to meet the needs of unserved and underserved communities by processing permits in a timely and efficient manner. If we cannot avoid delays of a year or more for projects in previously disturbed areas, we are unlikely to see the fruits of upcoming funding programs in the timeframes that Congress likely intended.

Q4 from the Honorable Russ Fulcher

With respect to the National Historic Preservation Act review exemption, can you provide any insights on the care used and maintained when locating broadband infrastructure near historic sites?

Answer from Michael Romano

After further inquiry with NTCA members and engineering and consulting firms that work with them on broadband deployment projects, I provide below a few examples of the level of care with which NTCA members approach construction efforts in Tribally significant areas that are subject to NHPA protections.

- In South Dakota, a prehistoric site was identified in the ROW prior to construction. The site included archeological work that could have been affected by the deployment. Rather than using a static plow that could have disturbed these archeological materials, the provider instead agreed to bore under the location for approximately 150 feet. A meeting was set up with the state department of transportation, an archeologist engaged by the provider, and the local Tribal preservation officer to determine site boundaries and boring locations, both of which were flagged in the field. An archeologist and Tribal member were both present during the construction process to ensure that no artifacts were found in the bore holes.
- In Minnesota, a federally funded project went through robust environmental and historical preservation review. No archeological sites were identified in the state record, but when the Tribal review period was conducted, a local Tribe raised concerns about the auditory levels of construction because of proximity to local spiritual sites. The Tribe and the provider worked together to identify appropriate and agreeable times for construction so that the ceremonies at the sites would not be disturbed while the deployment schedule would stay on track.



Wireless Infrastructure Association

Additional Questions for the Record:

The Honorable Russ Fulcher

1. When deploying on previously disturbed federal lands, do providers still need to submit environmental and historic preservation reviews?

While the Council on Environmental Quality (CEQ) generally sets policy for environmental and historic review, each federal approval agency is charged with implementing its own rules for these reviews. This has led to a variety of implementations, some of which are more efficiently organized than others. However, there is currently no uniform federal rule that exempts telecommunications deployments on previously disturbed federal lands from requirements for environmental and historic preservation reviews.

2. Can you expound on your comment that requiring an additional NEPA process undermines the idea that permitting processes should be "predictable, proportionate, and timely?" How does this harm both state and local governments and / or local broadband providers that play such a critical role in my state?

Generally, the initial NEPA reviews that are required for construction of the underlying wireless infrastructure are comprehensive and consider a wide breadth of potential impact that infrastructure could have on the surrounding environment. However, redundancies in our current rules—including different processes required by the federal land management authority and the FCC—can often require that same infrastructure to be reviewed again, even when the proposed action would not substantially change the nature of the infrastructure. Operators may need to make minor changes to their deployments based on a variety of reasons such as upgrading radio components, adding or modifying which bands the deployment utilizes, or adding additional capacity. These modifications can have a significant impact on the quality and availability of service without presenting significant new impacts on the environment. WIA supports the bills under consideration that would reduce duplicative reviews in the NEPA process to add predictability and proportionality to the process.

3. Do you agree with the Biden administration and with Republicans on this Committee that we should streamline the environmental review process in these previously disturbed areas, and if so, why?

WIA agrees with the bipartisan consensus that action must be taken to streamline reviews for telecommunications infrastructure to achieve universal service. Recognizing the redundancy of having previously reviewed and distributed locations reviewed again before modifications can be made is a solid step in the right direction towards achieving these goals. Guidance that the federal landowner will be the default lead agency for environmental review would be helpful.



Wireless Infrastructure Association

4. With respect to the National Historic Preservation Act review exemption, can you provide any insights on the care used and maintained when locating broadband infrastructure near historic sites? (Please Note: If this is something about which you have experience.)

WIA's members work closely with permitting authorities to plan and implement deployments that are minimally impactful to the surrounding areas while supporting the world class mobile services Americans expect everywhere. One major tool in that arsenal is colocating new equipment on existing structures. Deploying telecommunications infrastructure on existing structures has allowed providers to reduce costs while maintaining the nature and aesthetics of the surrounding area. Colocation is also supported across various federal agencies, including the FCC and the FirstNet Authorizing Statute.

Members report that exemptions apply to colocation project scopes that are inherently minimally impactful. Colocating standard antennas on an existing tower, with base station equipment placed within the existing compound does not substantially alter the visual profile or environmental impacts of the facility. Any substantial increase to the tower height or tower footprint requires further NHPA review. If there is potential for direct or indirect effects on historic or cultural resources, design mitigations can be employed for the life of the facility (e.g., limiting height, painting a certain color, camouflaging as another type of structure, etc.).

Energy and Commerce Hearing on April 19, 2023 "Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment" Responses to Questions for the Record

Louis Finkel, Senior Vice President for Government Relations National Rural Electric Cooperative Association

Questions from the Honorable Russ Fulcher

- 1. When deploying on previously disturbed federal lands, do providers still need to submit environmental and historic reviews?
 - a. Yes. In many instances, when deploying broadband service along existing utility infrastructure, an additional environmental review or historic preservation review is required. This is because the agency will treat broadband service and electric service as two totally separate services, despite leveraging the same infrastructure in the same rights of way. While some agencies have been directed to provide an expedited treatment of permitting requests and periodically categorical exclusions are granted, there is no standardized treatment of requests and each agency, and in some instances even regional or local branches of those agencies, can have different interpretations and applications of NEPA or NHPA requirements.
- 2. Can you provide me with some information regarding impacts on the timeline for these projects, as well as any concerns over the use of dollars that might have a deadline on which they can be spent?
 - a. Cooperatives on more than one occasion have been told by environmental specialists at the US Forest Service that it can take up to 270 days to review a broadband deployment permit application when using existing poles in existing rights of way, despite having existing permits for electric service on the same poles in the same rights of way. Some examples, including one experience with the Bureau of Land Management, were included in our written testimony.
 - b. In one instance, a co-op in Missouri filed a permit application with the US Forest Service to leverage existing poles along existing rights of way for broadband deployment. That application was filed in February of 2022, and were told it could take up to a year to process the permit. They have been advised that the permit should be processed by the end of June, which is 16 months from the original date of application. Because of the delay, they are concerned that their contractors will have completed the other portions of the build and moved on to new contracts, meaning that the co-op will have to secure new crews to finish the build. Not only will this increase project costs, but it delays the completion of a broadband build and leaves 250 homes without internet service.
 - c. Another co-op began communicating with the US Forest Service in early June 2021, and submitted a permit application using the Form SF 299 in August 2021. Despite numerous phone calls and emails since, there has been no progress on the permit application. As of August 2022, there was still no update on the status of the permit. As of today, the only information that has been provided to the co-op about costs has been a reply of "we know there will be charges, but we do not know how it will be calculated." Without timely replies or estimates of potential charges, the co-op is unable to budget and plan appropriately for these costs, nor is it able to provide a clear timeline on when the broadband build will move forward or be completed.

- d. The US Forest Service is not the only agency presenting challenges, delays, or increased costs when trying to cross federal lands. Crossing land managed by the US Army Corps also presents challenges. In one instance, a co-op in Missouri reached out to the local Corps contact after months of an access request being in, and the reply was that the co-op needed to re-share the information with that contact so they could begin the review. Due to the Corps' Nonrecreational Outgrant Policy, they were advised that the agency typically does not provide permits without the project providing a benefit to the government. The co-op attempting to cross Corps land is working to complete a CAF II award, and without access to Corps' managed land, they are unsure how they will complete the project.
- 3. How does requiring another NEPA process for previously disturbed federal land harm both state and local governments and/or local broadband providers that play such a critical role in my state?
 - a. A second NEPA process is duplicative and unnecessary when leveraging existing utility infrastructure in existing rights of way. There is very little ground disturbance when adding aerial communications infrastructure to utility poles beyond what would normally be required to maintain electric lines or upgrade electric facilities. Requiring another NEPA process can add additional, unanticipated or unbudgeted costs to a project as well as significant delays to project timelines. For co-ops, who operate at cost and strive to keep rates as low as possible for their consumers, significant additional costs or project delays can have a negative financial impact and lead to increased rates for members. These barriers can also negatively impact the original feasibility of a project, and can even dissuade providers from extending service into rural areas.
- 4. Do you agree with the Biden Administration and with Republicans on this Committee that we should streamline the environmental review process in these previously disturbed areas, and if so, why?
 - a. Yes. As it stands now, the environmental review process takes entirely too long and is too expensive. Streamlining the process, ensuring that all agencies are applying the law in a uniform manner, and timely responses to applications and requests for information will help to expedite broadband deployment in previously disturbed areas.
- 5. With respect to the National Historic Preservation Act review exemption, can you provide any insights on the care used and maintained when locating broadband infrastructure near a historic site?
 - a. Co-ops recognize the importance of preserving our history while meeting the needs of the future, and they follow appropriate federal, state, and local historic preservation protocols in the rare instances that historic resources are discovered in the course of their operations. This process includes consultation with State and Tribal historic preservation officials, local governments, and members of the public that could have a social or cultural interest in the project. Similar to co-op concerns related to unduly burdensome and time consuming NEPA processes, we see little added benefit to requiring a full National Historic Preservation Act (NHPA) review in cases where broadband infrastructure is being added to existing co-op infrastructure in existing rights-of-way and easements. In most cases, a historic review would already have been completed when such existing infrastructure was constructed, and adding broadband to that infrastructure would have limited impact on any existing historic resources. When a

new NHPA review may be required for the addition of broadband in an existing right-of-way or easement, a streamlined process limited to evaluating only substantial alterations to infrastructure that are highly likely to impact historic resources in the right-of-way should be sufficient.