



November 30, 2015

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Subcommittee Markup

I. INTRODUCTION

The Subcommittee on Communications and Technology will meet in open markup session on Wednesday, December 2, 2015, at 10:00 a.m. in 2123 Rayburn House Office Building to consider the following:

- Discussion Draft, to amend the National Telecommunications and Information Administration Organization Act to facilitate the deployment of communications infrastructure by providing for an inventory of Federal assets for use in connection with such deployment, to streamline certain Federal approvals of communications facilities, to provide for measures to promote the use of utility poles in the deployment of broadband, and for other purposes; and,
- H.R. 1641, Federal Spectrum Incentive Act of 2015.

In keeping with Chairman Upton's announced policy, Members must submit any amendments they may have two hours before they are offered during this markup. Members may submit amendments by email to peter.kielty@mail.house.gov. Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

II. DISCUSSION DRAFT

A. Background

Broadband services have transformed the global economy, and the American economy has undoubtedly benefited from the availability of new markets, new services, and new technologies suddenly made available through the high-speed connectivity of broadband networks. Experts predict only further growth in data usage. Forecasters predict that by 2019, consumer IP traffic in the U.S. alone will reach 38.6 Exabytes per month, the equivalent of 13 million DVDs crossing our networks per hour.¹ By 2019, Americans are expected to use 3.9 billion networked devices – almost double the 2 billion in service in 2014.² To keep pace with

¹ Cisco Virtual Networking Index, 2019 Forecast Highlights at http://www.cisco.com/web/solutions/sp/vni/vni_forecast_highlights/index.html.

² *Id.*, Device Profiles.

the growth in traffic, broadband networks must also grow in both scale and scope, but the cost of building such networks can be significant.

On July 22, 2015, this Subcommittee held a hearing to examine the costs of deploying broadband infrastructure. The discussion with the hearing witnesses indicated that governments — both federal and local — could play a significant role in lowering the costs of infrastructure deployment, particularly with respect to granting access to rights of way. As the Honorable Jonathan Adelstein, a witness for PCIA – The Wireless Infrastructure Association, explained in his testimony, “[t]he Federal government owns or administers nearly thirty percent of all land in the United States, including thousands of buildings. Broadband providers currently face significant challenges when working to secure access to Federal lands and buildings to deploy infrastructure.”³

The Federal government has long recognized the value of facilitating access to Federal lands and facilities for broadband deployment. In 1995, President Clinton required the Government Services Administration (GSA) to develop guidelines to permit deployment of wireless antennas on Federal buildings and lands.⁴ In March 2007, the GSA updated these procedures and declared them effective indefinitely.⁵ The rents that the government may charge are expected to be reasonable and based on “market value” per the 1995 presidential memo.⁶ Congress took additional measures in 2011 by directing GSA to develop master standard forms, contracts, and fee schedules for wireless antenna siting.⁷ By standardizing the placement of wireless antennas, among other considerations, these master contracts would lower real estate costs and streamline local zoning and permitting for network infrastructure. GSA has only recently produced these documents, and it is unclear if they are being used with any uniformity by the federal agencies.

On October 28, 2015, the subcommittee held a legislative hearing to discuss additional ways in which the federal government could streamline the requirements for obtaining rights of way on federal lands — not only for wireless providers, but also for providers of wired broadband. At this hearing, witnesses discussed the need for better predictability and consistency in the federal licensing and permitting process. Witnesses cited routine delays in obtaining permits — or even simply renewing existing agreements — from federal agencies such as the Bureau of Indian Affairs, the Forest Service, or the Bureau of Land Management. Witnesses also praised the introduction of H.R. 3805, which would require the installation of broadband conduit, as needed, in federally funded highway projects. Witnesses noted that the existence of conduits

³ Testimony of the Honorable Jonathan S. Adelstein, President and CEO, PCIA – The Wireless Infrastructure Association, at the Hearing of the Subcommittee on Communications and Technology on “Promoting Broadband Investment,” July 22, 2015 available at <http://docs.house.gov/meetings/IF/IF16/20150722/103745/HHRG-114-IF16-Wstate-AdelsteinJ-20150722.pdf>.

⁴ See Memorandum on Facilitating Access to Federal Property for the Siting of Mobile Services Antennas, 31 Weekly Comp. Pres. Doc. 1424 (Aug. 10, 1995); see also 41 C.F.R. §§ 102-79.70 - .100.

⁵ See 72 Fed. Reg. 11,881 (2007).

⁶ *Id.*

⁷ Middle Class Tax Relief and Job Creation Act of 2012, Sec. 6409(c), Pub.L. 112–96, H.R. 3630, 126 Stat. 156 (2012).

could obviate the need for obtaining rights of way and avoid the onerous permitting process required by the federal government.

B. Summary

Section 1. Short Title.

This section provides the short title for the draft legislation.

Section 2. No Additional Appropriations Authorized.

This section makes clear that this draft bill does not authorize any additional funds for agencies to implement the provisions of the bill.

Section 3. Inventory of Federal Assets.

This section requires the National Telecommunications and Information Administration (NTIA) to maintain a database of federal real property assets that may be used for deploying broadband communications facilities. This section requires all landholding agencies to provide information to NTIA for inclusion in this database as well as a single point of contact for requests for access to rights of ways. NTIA is also charged with ensuring the security of this database from breach and other dangers. The draft bill would exempt classified information from inclusion in the database and provides for consultation with NTIA for any other proposed exemptions.

This database is also intended to permit local governments to add its information to the database on a voluntary basis. Hearing witnesses indicated that complete and accurate local asset information is a critical part of streamlining broadband deployment, however counties and local governments may not have the financial resources to build a searchable database of its towers, poles, or buildings. The NTIA's federal asset inventory database should be flexible enough to allow local governments to house their own local information within the database, so that localities can attract buildout by broadband service providers.

Section 4. Tracking of Applications to Locate or Modify Communications Facilities on Federal Property.

This section is intended to remedy a common problem faced by applicants seeking to build broadband infrastructure on federal rights of way. Often, applicants are unable to determine the status of an application. The draft bill proposes to increase accountability at agencies by placing responsibility for timely and transparent disposition of rights of way permit and license applications with the Senior Real Property Office (SRPO). Along with placing accountability with the SRPO, the draft legislation also requires agencies to take ownership of the process by including speed of resolving these applications in the agencies performance metrics.

Under the draft legislation, the SRPOs would be required to report to NTIA annually on the speed with which its agency has processed applications. Further, NTIA is required to review the data from the SRPOs and report to Congress with recommendations for improvement.

Section 5. Regulation of Pole Attachments.

This section makes federally owned poles subject to the existing utility pole rate structure and regulatory regime administered by the Federal Communications Commission (FCC or Commission). This section also requires all pole owners to provide nondiscriminatory access to its poles. Moreover, any state seeking to preempt federal regulation of pole attachments may do so only if it can certify that its regulations include a nondiscriminatory access requirement. This requirement is intended to ensure that all providers of communications services may obtain access to poles.

Section 5 also requires all pole owners to report annually on the rates charged for pole attachments. Pole owners are also required to provide an annual inventory of poles to the FCC, who must then maintain a database of poles. The Commission must also review the costs of the make-ready process and determine whether rules are warranted or necessary to ensure that the make-ready process is reasonable.

This section also recognizes that increasingly, incumbent local exchange carriers require access to utility poles, and it permits them to take advantage of the statutory rate in order to spur broadband deployment. Finally, this section also requires the pole owners to allow access to the pole tops.

Section 6. Common Forms, Fees, and Master Contracts for Location of Wireless Facilities on Federal Property.

This section builds on the work accomplished by GSA under the direction of section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, which required the GSA to develop standard forms, fee schedules, and contracts for the siting of wireless facilities. Section 6 requires that the standard forms, fees, and master contracts to be made available and that agencies use them for siting wireless facilities on federal property.

Section 7. Streamlining Department of the Interior Process for Communications Facility Location Applications.

This section requires the Department of the Interior to conduct a rulemaking to standardize and streamline the process for obtaining rights-of-way under its various bureaus and offices. This would require Bureau of Land Management, Bureau of Indian Affairs, Bureau of Reclamation, and other bureaus of the Department of the Interior to standardize their requirements for obtaining rights of way, to the extent possible. The rulemaking must include a grant of minimum lease terms, a policy of automatic rights of renewal, and shot clocks under which applications can expect resolution. The rulemaking must also include standardized fees, which the agency may use to recover costs of processing the requests for rights of way. The

Department of the Interior must also consider how to run permitting processes in parallel rather than sequentially, and must consider how to eliminate overlapping requirements between its bureaus and offices. Finally, the Department of the Interior must ensure that the policies and procedures that are derived from this rulemaking are uniformly implemented across all field offices.

Specifically, with regard to the Fish and Wildlife Service, the agency must review the impact of particular rulemakings on wireless tower siting and determine how it can expedite its permitting procedures.

Section 8. Streamlining Forest Service Process for Communications Facility Location Applications.

This section requires the Department of Agriculture to conduct a rulemaking to standardize and streamline the process for obtaining rights of way under the Forest Service. The rulemaking must also include a grant of minimum lease terms, a policy of automatic rights of renewal, and shot clocks under which applications can expect resolution. The rulemaking must also include standardized fees, which the agency may use to recover costs of processing the requests for rights of way. Finally, the Department of Agriculture must ensure that the policies and procedures that are derived from this rulemaking are uniformly implemented across all Forest Service field offices.

Section 9. Streamlining Department of Defense Process for Communications Facility Location Applications.

This section requires the Department of Defense to conduct a rulemaking to standardize and streamline the process for obtaining rights of way under its various branches and departments. This would require Army Corps of Engineers, as well as the various military branches, to standardize their requirements for obtaining rights of way, to the extent possible. The rulemaking must also include a grant of minimum lease terms, a policy of automatic rights of renewal, and shot clocks under which applications can expect resolution. The rulemaking must also include standardized fees, which the agency may use to recover costs of processing the requests for rights of way. The Department of Defense must also consider how to run permitting processes in parallel rather than sequentially and how to eliminate overlapping requirements between its bureaus and offices. Finally, the Department of Defense must ensure that the policies and procedures that are derived from this rulemaking are uniformly implemented across all bases and operations.

Section 10. Streamlining and Acceleration of Historic Preservation Review of Communications Facilities.

Section 10 requires the American Council on Historic Preservation (AHCP) to seek a memorandum of understanding with the Department of the Interior and the Forest Service that would help to expedite the Department of the Interior's and the Forest Service's compliance with section 106 of the American Historical Preservation Act for permitting broadband and wireless

facilities. Expediting this compliance through nationwide programmatic agreements could help to reduce the time for approval of broadband infrastructure projects. The FCC has already entered into such an agreement with the ACHP for wireless infrastructure such as towers. To ensure that such reviews are conducted in a timely manner, both the Department of the Interior and the Forest Service are required to set maximum deadlines for such historical preservation review of communications facilities projects.

Section 11. Streamlining and Acceleration of the Preparation of Environmental Impact Statements Relating to Communications Facilities.

This section requires the Council on Environmental Quality (CEQ) to review and streamline its requirements for environmental impact statements as prepared under the National Environmental Preservation Act (NEPA) with respect to the construction or modification of communications facilities. Subsequently, the Department of Homeland Security, Department of the Interior, the Forest Service, and the Department of Defense are required to review how they incorporate the guidance from CEQ to streamline their agency-specific requirements for environmental impact statements.

Section 12. Inclusion of Communications Conduit Installation in Certain Highway Construction Projects.

This section is based on H.R. 3805, Broadband Conduit Deployment Act of 2015, introduced this Congress by Chairman Walden and Ranking Member Eshoo. This section would require that broadband conduits be installed on federally funded highway construction projects, if the NTIA, the FCC, and the Department of Transportation determine that there is a need for additional conduits. These conduits would be made available by the states on a nondiscriminatory basis to any applicant seeking to deploy broadband infrastructure.

Section 13. Communications Facilities Defined.

This section defines “communications facilities” to encompass as broad a range of infrastructure required for the provision of communications services. The definition is intended to be technology neutral and allow access rights for evolving technology.

III. H.R. 1641, FEDERAL SPECTRUM INCENTIVE ACT

A. Background

This legislation, offered by Reps. Brett Guthrie (R-KY) and Doris Matsui (D-CA), addresses a critical piece of broadband infrastructure: spectrum. The Federal government is the biggest single user of spectrum. To date, there have been two primary approaches to making Federal spectrum available for auction to support commercial services: relocation of radio systems to alternate spectrum bands and spectrum sharing. Of the two approaches, Congress has expressed its preference for relocation as the resulting spectrum is better suited to commercial use and will likely result in higher auction proceeds for the Treasury. To achieve this goal, the

2004 Commercial Spectrum Enhancement Act created a centralized and streamlined mechanism for Federal agencies to recover the costs associated with relocating their radio frequency assignments from spectrum bands made available for contingent auction by the Federal Communications Commission (FCC). If the proceeds of the auction cover the cost of relocating the Federal agencies by 110 percent, the winning bidders receive licenses and the Federal agencies receive relocation funding.

One of the best examples of the success of this approach was the 2006 auction of the AWS-1 band (1710-1755 MHz and 2110-2155 MHz). The auction raised \$13 billion dollars and made 90 MHz of spectrum available for commercial deployment – spectrum that now powers many of the 4G networks across the country. Despite this successful outcome, however, there were unintended consequences for both government and commercial participants. The lessons learned in the AWS-1 auction were incorporated into the Commercial Spectrum Enhancement Act (CSEA) framework through provisions in the Middle Class Tax Relief and Job Creation Act of 2012 that were designed to smooth the process of clearing, to enable recovery of costs associated with spectrum sharing with non-Federal users, to provide funding for advance planning, and to facilitate system upgrades. These lessons were incorporated into and benefitted the recent auction of the AWS-3 band (1755-1780 MHz and 2155-2180 MHz), which raised more than \$40 billion dollars and made an additional 50 MHz of spectrum available for commercial deployment.

H.R. 1641 builds upon previous legislation by providing additional tools to make federal spectrum available for auction. H.R. 1641 incentivizes efficient federal spectrum operations by providing a portion of auction proceeds for Federal users that choose to make spectrum available for auction by discontinuing radio operations without relocating to other frequencies or through relocating operations to spectrum bands shared by another Federal user.

B. Summary

H.R. 1641 amends CSEA to allow federal entities to participate in an incentive auction and voluntarily relinquish their licenses to be auctioned for commercial use. In exchange for participation, the bill would allow participating federal entities to receive a percentage of auction proceeds for discontinuing or relocating operations on those frequencies. Current law only allows for entities to be reimbursed for the costs of sharing with nonfederal users or relocating. Funds from the proceeds would be placed into a fund at the Office of Management and Budget, to be used by participating agencies to offset sequestration or relocation and sharing.

IV. STAFF CONTACTS

If you have any questions regarding the draft legislation, please contact David Redl or Grace Koh of the Committee staff at (202) 225-2927. If you have any questions regarding H.R. 1641, please contact David Redl or Kelsey Guyselman of the Committee staff at (202) 225-2927.