

Energy and Commerce Hearing on April 19, 2023
“Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment”
Responses to Questions for the Record

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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.