



Statement by

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Committee on Energy and Commerce
Subcommittee on Communications and Technology**

“Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment”

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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 COST-EFFECTIVE 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 much-needed 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.

- **Timely Replacement Under Secure and Trusted for Early and Dependable Broadband 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.