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

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-ee57-4d42-8809-4143314ecf92/12.01.2022-broadband-permitting-on-federal-land.pdf ("It is crucial we close the digital divide by

2111 WILSON BLVD., SUITE 210, ARLINGTON VA 22201
MAIN 800.759.0300 / WIA.ORG

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).

2111 WILSON BLVD., SUITE 210, ARLINGTON VA 22201
MAIN 800.759.0300 / WIA.ORG

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

[3] CensusNBM, Report 358, Percent of US Housing Units with Access to Multiple Wireless Broadband Providers December 2020, https://censusnbm.com/doc/CensusNBM%20358%20All%20Wireless%20Broadband%20Providers%20by%20State.pdf

2111 WILSON BLVD., SUITE 210, ARLINGTON VA 22201
MAIN 800.759.0300 / WIA.ORG

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.

2111 WILSON BLVD., SUITE 210, ARLINGTON VA 22201
MAIN 800.759.0300 / WIA.ORG

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.[8] 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.[9] 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).

2111 WILSON BLVD., SUITE 210, ARLINGTON VA 22201
MAIN 800.759.0300 / WIA.ORG

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.

2111 WILSON BLVD., SUITE 210, ARLINGTON VA 22201
MAIN 800.759.0300 / WIA.ORG

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.

2111 WILSON BLVD., SUITE 210, ARLINGTON VA 22201
MAIN 800.759.0300 / WIA.ORG

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.).

2111 WILSON BLVD., SUITE 210, ARLINGTON VA 22201
MAIN 800.759.0300 / WIA.ORG

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.

[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").

2111 WILSON BLVD., SUITE 210, ARLINGTON VA 22201
MAIN 800.759.0300 / WIA.ORG

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

[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.

2111 WILSON BLVD., SUITE 210, ARLINGTON VA 22201
MAIN 800.759.0300 / WIA.ORG

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.

2111 WILSON BLVD., SUITE 210, ARLINGTON VA 22201
MAIN 800.759.0300 / WIA.ORG