

Committee on Natural Resources

Rob Bishop Chairman
Markup Memorandum

June 4, 2018

To: All Natural Resources Committee Members

From: Majority Committee Staff – Chris Esparza and Leah Baker
Subcommittee on Federal Lands (x6-7736)

Mark-Up: **H.R. 4824 (Rep. John R. Curtis)**, To allow certain State permitting authority to encourage expansion of broadband service to rural communities, and for other purposes.
June 6, 2018, 10:15 AM; 1324 Longworth House Office Building

H.R. 4824, “Rural Broadband Permitting Efficiency Act of 2018”

Summary of the Bill

H.R. 4824, introduced by Representative John R. Curtis (R-UT-03), streamlines federal broadband permitting by establishing a delegation-to-states program for the permitting process within existing operational rights of way. In addition, this bill requires the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) to designate projects within existing operational rights-of-way as categorical exclusions under the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.). Finally, H.R. 4824 requires that each BLM field office issuing permits for broadband projects establish a permitting office and serve as the lead federal agency for permit processing.

Cosponsors

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Background

Approximately 40 percent of rural Americans do not have access to broadband internet¹. Without adequate and consistent internet access, people are unable to effectively communicate, gain access to vital information services, and increasingly, participate in the workforce. An efficient and effective way to expand broadband to rural areas is through construction of broadband infrastructure in existing rights-of-way (ROW) for linear utilities and roads. However, duplicative federal permitting laws and regulations cause project delays and cost-overruns.

Currently, providers undertaking projects to install broadband infrastructure in existing ROWs may be required to obtain approval from multiple agencies, including the Federal Highway Administration, State Departments of Transportation, BLM, and USFS. This process

¹ Federal Communications Commission, FCC 16-6, 2016 Broadband Progress Report (2016).

can include extensive environmental review, in compliance with NEPA, even though the ROWs already underwent NEPA analysis. These duplicative reviews cause unnecessary delays in permit processing and discourage providers and States from pursuing broadband deployment projects, particularly in rural areas.

H.R. 4824, the Rural Broadband Permitting Efficiency Act of 2018, streamlines broadband permitting in ROWs, saving time and money in broadband deployment.

The Subcommittee on Federal Lands held a legislative hearing on H.R. 4824 on May 17, 2018.

Major Provisions/Analysis of H.R. 4824

Sec. 1: Short Title

Sec. 2: Findings

Sec. 3: Definitions

Sec. 4: State Permitting Authority

Requires the U.S. Department of Agriculture (USDA), with respect to National Forest System land, and the Department of the Interior (DOI), with respect to BLM land, to establish a program to enter into memoranda of understanding (MOU) with States to allow for the permitting of broadband within an operational ROW (defined as: all real property interests, including easements, acquired for the construction or operation of a project) to enable broadband providers to install broadband infrastructure that allows users to originate and receive high-quality voice, data, graphics, and video telecommunications.

A State's governor, or a State's top-ranking transportation official in charge of highway construction, may enter into such an MOU for a term not to exceed 10 years if the State consents to federal court jurisdiction, federal environmental review procedures, judicial review of decisions regarding the public availability of documents, maintenance of necessary financial resources, and the provision of any information that USDA or DOI needs to ensure that the State is carrying out its responsibilities.

Sec. 5: Categorical Exclusion for Projects with Operational Rights-of-Way

Creates a categorical exclusion under NEPA for broadband projects within an existing operational ROW.

Sec. 6: Federal Broadband Permit Coordination

Requires that DOI establish a “Federal Permit Streamlining Project” in each BLM field office with responsibility for issuing permits for broadband projects. Under the program, DOI acts as the lead agency for the issuance of a single permit on behalf of all other federal agencies involved in a broadband project through an MOU with USDA, the Environmental Protection Agency, the Federal Highway Administration, and the U.S. Fish and Wildlife Service.

Cost

A Congressional Budget Office cost estimate has not yet been completed for this bill.

Administration Position

The Acting Associate Director of the Bureau of Land Management, Mr. Timothy Spisak, testified on H.R. 4824 at the Subcommittee on Federal Lands hearing in support of the goals of the legislation, but expressed interest in providing support to solve efficiency and technical concerns.

Anticipated Amendments

One amendment from Mr. Curtis is anticipated to expand the permit delegation program to include tribes as eligible parties to whom broadband permit authorization can be delegated; clarify the categorical exclusion and remove subsequent rulemaking; remove the requirement that BLM be lead agency for all broadband permitting authorizations that are not delegated to States or tribes; move the federal point of contact from the field office to the State or regional office; and make technical corrections.

Effect on Current Law (Ramseyer)

None.