



Statement by

**Michael Romano
Executive Vice President
NTCA–The Rural Broadband Association**

**Before the
United States House of Representatives
Committee on Natural Resources
Subcommittee on Federal Lands
Legislative Hearing on H.R. 3283, H.R. 3299, H.R. 5401,
H.R. 6012, H.R. 7976, and H.R. 8012**

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INTRODUCTION AND BACKGROUND

Chairman Tiffany, Ranking Member Neguse, Vice Chairman Curtis, and members of the Subcommittee, thank you for the opportunity to testify at this legislative hearing. My testimony today will focus upon two bills – H.R. 3283, “*Facilitating the Deployment of Infrastructure with Greater Internet Transactions and Legacy Applications Act*” or the “*Facilitating DIGITAL Applications Act*,” and H.R. 3299, “*Deploying Infrastructure with Greater Internet Transactions and Legacy Applications Act*” or the “*DIGITAL Applications Act*.”

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 parts of rural America across 45 states. Despite having approximately 6,000 customers on average over thousands of square miles, facing typical densities of approximately six locations per mile (less than the entire State of Montana), 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 more than 80% of members’ customers have fiber connections and 100 Mbps symmetrical broadband 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. Moreover, it is worth noting that for all this compelling progress, there is more to be done. Even as more than 80% of NTCA members’ rural customers on average can receive service that rivals what many urban and suburban users enjoy, and even as this percentage continues to climb year after year, much work remains to deliver the same high levels of service to the remaining customers. 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 larger providers as well. As just one example, NTCA members collectively have been among the most active applicants for, and among the largest recipients of, ReConnect program funding 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 in small towns and unincorporated areas across rural America – even beyond their historical footprints.

But this brings us to this important hearing. Based upon this extensive history of network deployment – upon not only the federal lands that are under the purview of this Subcommittee, but also 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 some of these experiences, and to highlight how H.R. 3283 and H.R. 3299 can help in providing greater access and transparency with respect to the process of applying to place broadband facilities on federal lands – and ultimately in expediting such broadband deployment. NTCA is thankful to Representatives Miller-Meeks and Cammack, respectively, for sponsoring these bills, and to Representatives Dingell and Matsui, respectively, for showing bipartisan support for these bills as original co-sponsors.

As context for why measures like these are so important, I will first provide a few brief examples from rural network deployments to highlight how permitting processes can affect the achievement of universal broadband. NTCA members are particularly concerned that the delays and costs that already exist within permitting processes will only grow as efforts to deliver on universal broadband connectivity ramp up in coming years. After discussing these examples, I will discuss how H.R. 3283 and H.R. 3299 would help in addressing an important part of these processes. Finally, I will highlight a few additional considerations for Congress in relation to permitting.

EXAMPLES OF BROADBAND PERMITTING ISSUES

NTCA members across the nation indicate that our country’s broadband availability and affordability goals could be undermined by inefficient or ineffective processes to apply for and 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.

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. Given the nature of the areas these providers serve, they often have no choice, for example, but to install fiber under a road touching Bureau of Land Management (“BLM”), National Park Service, or Forest Service property, as re-rerouting even just a 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). (It is also worth noting that providers must comply with NEPA and NHPA processes even if they are not installing facilities on federal lands; for example, if the deployment is funded by a ReConnect or BEAD grant, providers must adhere to NEPA and NHPA regardless of whether the project is on federal lands.) Members recount delays of up to two years in some cases to apply for and obtain permissions to build. 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 brief examples to provide context:

- One NTCA member sought to place fiber under a road on BLM land. The project was 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. The initial permit application was not accepted as complete for nearly a year, however, 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 to begin construction and receive funds for 9 months. This resulted in an even greater delay than that, however, as the project is in a part 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.
- 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 was informed that final release of ReConnect grant funds would require securing more than two dozen wetlands permits, which could not be obtained without submitting more detailed engineering and network design plans, even as such plans were already included in the ReConnect grant application in the first instance.
- An NTCA member reports having to plan for phases of a construction project so that any work on U.S. Forest Service lands will be undertaken last because of a lack of sufficient staffing in the agency to process the voluminous amount of information required in connection with environmental reviews; in turn, these delays have made already-difficult parts of the projects even more expensive due to inflationary impacts as calendar quarters and years go by awaiting approval.

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 application processing can be confounding and counterproductive to upgrading of existing networks. NTCA members have serious concerns that, without proactive planning and concrete action, issues of this kind could become more severe as private investment ramps to meet ever-increasing broadband demand – and as the largest broadband deployment funding program in our nation's history prepares to launch to amplify and augment these private sector efforts.

H.R. 3283 AND H.R. 3299

The broadband-related bills under consideration today aim to tackle an important piece of the permitting puzzle – how providers apply for and obtain permission to deploy networks on federal lands. Specifically, Form 299 (SF-299) was created by the General Services Administration (“GSA”) pursuant to a 2012 mandate from Congress for a common application to install, construct, or maintain certain communications facilities on federal property. A report prepared for the third quarter of 2023 by GSA indicated the following activity in recent quarters across federal property-managing agencies related to Form 299 submissions:

Table 1: Aggregate Summary of Reporting Results

Description	Q4FY 22	Q1 FY23	Q2 FY23	Q3 FY 23
Total Applications Received Per Quarter	262	149	167	100
Approvals				
Aggregate Number of Applications approved	165	80	87	52
Average # days applications pending before approval	233	202	116	120
Applications approved < 270 days	114	64	87	52
Applications approved > 270 days	51	16	0	0
Applications authorized	74	58	58	46
Rejections				
Applications rejected	0	0	0	2
Average # days applications pending before rejection	N/A	N/A	N/A	100
Applications withdrawn	0	13	16	6
Pending				
Applications pending at the end of the reporting period	341	397	461	501
Average number of days pending	321	321	298	272
Note: The “N/A” denotes that the average number of days applications are pending before rejection cannot be calculated when agencies do not reject any applications during the reporting period.				

Source: GSA, *Executive Order 13821, “Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America,”* Q3 FY 2023 Quarterly Report (available at: https://www.gsa.gov/system/files/Executive_Order_13821_Quarterly_Report_Q3FY23.pdf)

Data such as these underscore the importance of processing applications as efficiently as possible, with dozens of applications authorized each quarter but far more submitted and more still under consideration from prior quarters. Moreover, this same GSA report indicated (at page 7) that BLM, which is “typically responsible for 80% of the volume of reported applications,” had switched to a new record-keeping system “that may have contributed to field offices having challenges querying their databases” and “likely resulted in fewer applications being reported than are present in their inventory.”

NTCA members report that Form 299 itself is relatively straightforward to complete (even as subsequent layers of environmental and historical preservation review can take much more work and time as noted in the examples I shared earlier). But the lack of an online portal for submission has led at times to frustration, confusion, and apparent delay. For example, one NTCA member reported concern in identifying the proper Forest Service personnel to whom to route an application; obviously, an online portal would mitigate unnecessary delays and confusion in this regard. Similarly, another member has indicated that the use of an online portal in connection with State-level permitting processes has yielded efficiencies in tracking progress of review and approval, highlighting the promise of such an approach at the federal level as well.

H.R. 3283 would help to prompt the creation of such an online portal by directing the Department of Commerce to consult promptly with the Secretaries of the Interior and Agriculture (the two most significant property-managing agencies in NTCA members' experience) and then to submit a report to Congress within 90 days regarding the status of efforts in those agencies to create an online portal for submission of Forms 299 and any barriers thereto. Meanwhile, H.R. 3299 would take the additional step of compelling the Interior and Agriculture departments to create such online portals within one year. NTCA supports both H.R. 3283 and H.R. 3299, and we encourage the Subcommittee to advance these bipartisan measures as important steps in improving the effectiveness of Form 299 and ultimately making it easier for providers and property-managing agencies alike to process broadband deployment applications.

ADDITIONAL CONSIDERATIONS

Before ending my testimony, I wanted to address a few other matters related to the ultimate effectiveness of any online portals and the streamlining of permitting processes generally.

First, I had the privilege to testify last year before the Subcommittee on Communications and Technology of the House Committee on Energy and Commerce. That hearing reviewed a few dozen bills aimed at streamlining permitting issues to expedite broadband deployment. It is useful to highlight one particular aspect of that testimony here related to the definition of "communications facility," which is drawn from the Middle Class Tax Relief and Job Creation Act of 2012 and is cited in the legislation before us today (H.R. 3283 and H.R. 3299). While the section of the 2012 law in which it appears is entitled "Wireless Facilities Deployment," and while a good portion of that section speaks to the placement of wireless towers or base stations, the definition of a "communications facility installation" is expressly defined to include "wireline transmission" as well. I raise this here again simply to underscore that it will remain important for all parties – from Congress to the property-managing agencies to providers – to recall that provisions seeking to improve online application processes or to streamline permitting otherwise must apply with equal force to wireline and wireless deployments alike.

Second, I would be remiss in discussing the processing of applications if I did not raise concerns about the workforce needed to fulfill these obligations. 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 large 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. In addition to improving the technology by which applications can be submitted and processed, we must ensure that these agencies and offices have the resources and skill sets needed to meet this demand. The promise offered by an online portal will be undermined if there is insufficient trained and skilled agency staff on the receiving end to process those applications.

Finally, any online portal should be designed not only to receive Forms 299 in the first instance, but also to facilitate better communication among stakeholders regarding the status of them. NTCA members report that 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 episodes of silence 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 a mandatory 270-day review period until much longer after filing. NTCA therefore hopes that any online portals created will not only facilitate the submission of applications, but that they will also provide greater visibility into the status of such applications – including identification of where they stand in terms of review and any items that might be deemed as lacking or missing in the submission.

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, and other stakeholders to realize and sustain our nation’s shared vision of universal broadband access.