



U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

March 17, 2017

TO: Members, Subcommittee on Communications and Technology

FROM: Committee Majority Staff

RE: Hearing entitled “Broadband: Deploying America’s 21st Century Infrastructure”

I. INTRODUCTION

The Subcommittee on Communications and Technology will hold a hearing on Tuesday, March 21, 2017, at 10:00 a.m. in 2322 Rayburn House Office Building. The hearing is entitled “Broadband: Deploying America’s 21st Century Infrastructure.”

The purpose of this hearing is to discuss barriers at the federal level that hinder private sector investment in broadband infrastructure and to examine legislation intended to remove these barriers. Additionally, the Subcommittee will discuss the challenges of collecting, aggregating, and making available accurate data relating to the availability of broadband service across the United States.

II. WITNESSES

Panel 1

- Steven K. Berry, President and CEO, Competitive Carriers Association;
- LeRoy T. Carlson, Jr., CEO, Telephone and Data Systems, Inc. and Chairman, U.S. Cellular;
- Michael Conners, Sub Chief, Saint Regis Mohawk Tribe;
- Joanne S. Hovis, President, CTC Technology and Energy; and
- Thomas A. Murray, Founder and Managing Member, Community Wireless Structures, Chairman of the Board of Directors, Wireless Infrastructure Association.

Panel 2

- Bryan Darr, CEO, Mosaik Solutions; and
- James W. Stegeman, President, CostQuest Associates, Inc.

III. BACKGROUND

The importance of access to high speed Internet access - also known as broadband - in modern American life and economy cannot be understated. Broadband has enabled near-instantaneous exchange of information across the country, revolutionizing how Americans communicate, conduct commerce, and participate in government. Rapid technological innovation

has presented consumers with thousands of new applications that can provide everything from casual entertainment to essential services that improve quality of life.

Broadband also provides American businesses with a platform to succeed in the increasingly digital economy. A small, rural business can now offer its products and services beyond the local community and compete with companies around the world. All of these opportunities bring jobs, economic growth, and investment to our nation's economy.

Unfortunately, the rollout of broadband networks has been disproportionate and consumers in rural areas of the country are falling behind their urban counterparts in what has been described as the "digital divide." Notwithstanding the fact that there are other contributing factors, there is general agreement among the federal government, private industry, and public stakeholders that the framework of federal permitting, siting, and permissions to access rights-of-way present a barrier to investment and are slowing broadband deployment. During this hearing, the subcommittee will identify federal barriers to broadband deployment, examine proposals to eliminate them, and highlight the economic benefits of broadband.

Both Republican and Democratic administrations have attempted to streamline the process of federal permitting. For example, in 1995, President Clinton required the General Services Administration (GSA) to develop guidelines to permit deployment of wireless antennas on federal buildings and lands.¹ During the George W. Bush administration, the President's Council of Advisors on Science and Technology (PCAST) evaluated the process of broadband deployment and recommended that the Administration seek to facilitate the balance between the interests of governmental entities in protecting citizens and property while expeditiously granting broadband deployers the rights of way and authorizations necessary to provide service to consumers.² Accordingly, President Bush convened an inter-agency Federal Rights-of-Way Working Group, which made recommendations on ways to improve the availability of information on the permitting process, accelerating resolution on the permitting process, simplifying cost recovery, fees, and rental payments, and ensuring compliance by permit seekers.³

President Obama's administration also recognized the challenges faced by infrastructure builders.⁴ In 2011, the President established a Steering Committee on Federal Infrastructure

1 See Memorandum on Facilitating Access to Federal Property for the Siting of Mobile Services Antennas, 31 Weekly Comp. Pres. Doc. 1424 (Aug. 10, 1995); see also 41 C.F.R. §§ 102-79.70 through 102-79.100.

2 See PCAST Report on Building Out Broadband – Findings and Recommendations (Dec. 2002) at 9, at <https://www.whitehouse.gov/sites/default/files/microsites/ostp/pcast-02-broadband.pdf>.

3 See Federal Rights-of-Way Working Group Report, "Improving Rights-of -Way Management Across Federal Lands: A Roadmap for Greater Broadband Deployment" (Apr. 2004) at http://www.ntia.doc.gov/files/ntia/publications/frowreport_4-23-2004.pdf.

4 See Memorandum on Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review (Aug. 31, 2011) at <https://www.whitehouse.gov/the-press-office/2011/08/31/presidentialmemorandum-speeding-infrastructure-development-through-more> (directing expedited reviews of high-priority infrastructure projects as well as improvements in accountability, transparency, and efficiency in the permitting process); Memorandum on Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures (May 17, 2013) at <https://www.whitehouse.gov/the-press->

Permitting and Review Process Improvement, as well as a permitting dashboard to track applications in real-time.⁵ The Steering Committee, composed of members from twelve different agencies, has attempted to review and streamline permitting processes across multiple agencies and increase interagency cooperation.⁶ With regard to broadband deployment specifically, the President issued Executive Order 13616 on “Accelerating Broadband Infrastructure Deployment,” establishing the Broadband Deployment on Federal Property Working Group.⁷ The Working Group was composed of representatives from fourteen federal agencies and offices with significant land ownership or management responsibilities or expertise relevant to broadband infrastructure deployment on federal lands and buildings. The group’s most recent report was issued in 2013.⁸ Finally, a presidential memorandum issued in 2015 established the Broadband Opportunity Council (BOC), a group comprised of 25 federal agencies and departments intended to determine how to improve adoption of, investment in, and deployment of broadband services.⁹ In September 2016, the BOC released a report detailing several recommendations to promote broadband deployment and expand access to federal assets.¹⁰

Despite these initiatives by previous Administrations to streamline and accelerate the federal regulatory processes surrounding broadband deployment, challenges to private investment remain.

IV. ISSUES

The following issues may be examined at the hearing:

A. Barriers to Deployment

office/2013/05/17/presidential-memorandummodernizing-federal-infrastructure-review-and-pe (seeking to streamline and eliminate duplications across multiple agencies and institutionalize best practices in permitting processes).

⁵ Exec. Order No. 13,604, 77 Fed. Reg. 18885 (Mar. 22, 2012).

⁶ See, e.g., Implementation Plan for the Presidential Memorandum on Modernizing Infrastructure Permitting at <https://www.permits.performance.gov/tools/implementation-plan>.

⁷ Exec. Order No. 13,616, 77 Fed. Reg. 36903 (Jun. 14, 2012).

⁸ Broadband Deployment on Federal Property Working Group Report on Implementing Executive Order 13616: Progress on Accelerating Broadband Infrastructure Deployment, A Progress Report to the Steering Committee on Federal Infrastructure Permitting and Review Process Improvement (Aug. 2013) at https://www.whitehouse.gov/sites/default/files/microsites/ostp/broadband_eo_implementation.pdf

⁹ See Memorandum on Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training (Mar. 23, 2015) at <https://www.whitehouse.gov/the-pressoffice/2015/03/23/presidential-memorandum-expanding-broadband-deployment-and-adoption-addr>.

¹⁰ See Broadband Opportunity Council Report and Recommendations Pursuant to the Presidential Memorandum on Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training (Aug. 20, 2015, rel. Sept. 21, 2015) at http://www.ntia.doc.gov/files/ntia/publications/broadband_opportunity_council_report_final.pdf.

The federal government is the largest landowner in the country – holding roughly 640 million acres or 28 percent of the 2.27 billion acres of land in the United States.¹¹ The federal government’s GSA also owns or leases space in 9,600 buildings nationwide.¹² Swift access to federal property would facilitate deployment of broadband facilities. However, navigating the labyrinth of the federal governments’ permitting process is often unwieldy and opaque. Duplicative review requirements, disparities in process from field office to field office, lack of clear direction, and unexplainable delays have stymied those seeking to construct towers, attach antennas, or trench fiber across public rights of way.¹³

Recognizing that Congress has a role to play in the deployment of broadband, the Subcommittee will examine legislation that would bolster the efforts made by the executive branch over the last decade. This draft legislation is modeled on the Subcommittee’s work on this issue in the 114th Congress.¹⁴

Discussion Draft to facilitate the deployment of communications infrastructure by providing for an inventory of federal assets for use in connection with such deployment, to streamline certain federal approvals of communications facilities, and for other purposes

a. Inventory of Federal Assets

The Discussion Draft requires the GSA Administrator to coordinate with the Administrator of the National Telecommunications and Information Administration (NTIA) to ensure federal agencies include an inventory of assets that can be used to attach or install broadband infrastructure. This inventory would be made available to providers of communications services and would include the location, a description of such asset, and a point of contact from each agency who can be contacted for more information on the asset.

b. Tracking of Applications to Locate or Modify Communications Facilities on Federal Real Property

The Discussion Draft requires the Senior Real Property Officer of covered agencies to track, record, and report on specified data on the applications to locate or modify communications facilities. This includes the number of applications submitted; number of those applications that were approved or denied; the reason for any denials; the amount of time the agency spent reviewing applications; and the amount of money the agency spent reviewing these

11 Ross W. Gorte, et al., “Federal Land Ownership: Overview and Data,” CRS Report R42346 (Feb. 8, 2012) available at <http://fas.org:8080/sgp/crs/misc/R42346.pdf>.

12 See GSA, GSA Properties Overview at <http://www.gsa.gov/portal/content/104501>.

13 See, e.g., Comments of PCIA, CTIA, Google, USTelecom, ITTA, National Cable & Telecommunications Association, or Fiber to the Home Council Americas, in response to the Broadband Opportunity Council Notice and Request for Comment, NTIA Docket No. 1540414365-5365-01 (Jun. 12, 2015). All of these separate comments are available at <http://www.ntia.doc.gov/federal-register-notice/2015/broadband-opportunity-council-comments>.

14 See, Subcommittee on Communications and Technology hearing “Breaking Down Barriers to Broadband Infrastructure Deployment” October 28, 2015 available at <https://energycommerce.house.gov/hearings-and-votes/hearings/breaking-down-barriers-broadband-infrastructure-deployment>

applications. The Senior Real Property Officer of each agency is required to report to NTIA each fiscal year. NTIA is required to report to Congress the progress of each agency and offer any recommendations to improve the efficiency of each agency.

c. Common Forms, Fees, and Master Contracts for Locations of Wireless Facilities on Federal Property

Section 6409(c) of the Middle Class Tax Relief and Job Creation Act of 2012 directed GSA to develop master forms, contracts, and section 6409 fee schedules. By standardizing the placement of wireless antennas, among other considerations, these master contracts would lower real estate costs and streamline local zoning and permitting for network infrastructure. This draft bill requires all landholding agencies to use these templates when leasing space for wireless broadband attachments.

d. Streamlining Department of Interior and Forest Service Processes for Communications Facilities Location Applications

The Discussion Draft requires the Bureau of Land Management and Forest Service to undertake a rulemaking designed to standardize their requirements for obtaining rights of way. The rulemaking must include a grant of minimum lease terms, a policy of automatic rights of renewal, and shot clocks under which applications can expect resolution. The rulemaking must also include standardized fees, which the agency may use to recover costs of processing the requests for rights of way. The Department of Interior must also consider how to run permitting processes in parallel rather than sequentially, and must consider how to eliminate overlapping requirements between its bureaus and offices. Finally, the Department of the Interior must ensure that the policies and procedures are uniformly implemented across all field offices.

e. Streamlining and Acceleration of Historic Preservation Review of Communications Facilities

The Discussion Draft requires the Advisory Council on Historic Preservation, the Secretary of Interior, and the Secretary of Agriculture to enter an agreement to allow the Department of Interior and the Forest Service to bypass duplicative reviews with respect to the construction, modification, or collocation of a communications facility on historic property. This section also requires the Forest Service and Department of Interior to promulgate regulations that establish a maximum amount of time to conduct a review of the effects on historic property of the construction, modification, or collocation of a communications facility.

f. Streamlining and Acceleration of the Preparation of Environmental Impact Statements Relating to Communications Facilities

The Discussion Draft requires that the Council on Environmental Quality conduct a proceeding to 1) determine how to streamline and accelerate the environmental impact statement process and, 2) that agencies conform their environmental impact analysis requirements accordingly.

Discussion Draft, Broadband Conduit Deployment Act of 2017

The Discussion Draft requires the Department of Transportation, in conjunction with NTIA and the Federal Communications Commission (FCC), to evaluate whether broadband conduits should be installed in any highway construction project using federal funds. If the evaluation indicates that additional broadband capacity would be needed in the next 15 years, the project must include the deployment of broadband conduit. Further, the broadband conduit must be made available by the states to any broadband provider at cost-based rates and the availability of the broadband conduit must be published in the National Broadband Map.

B. Implementing Accurate Broadband Availability Data

The American Recovery and Reinvestment Act of 2009 (ARRA) included provisions aimed at NTIA and the Department of Agriculture to address broadband adoption. The act provided \$4.7 billion to NTIA to establish the Broadband Technology Opportunities Program (BTOP), through which NTIA awarded competitive grants to a variety of entities for broadband infrastructure, public computer centers, and to increase broadband access and adoption. The Act also provided \$2.5 billion to fund access to broadband services in rural America. The Act expanded the Rural Utilities Service's existing authority to make loans and provided new authority to make grants that specifically facilitate broadband deployment in rural communities.¹⁵

Funds were made available to the states through BTOP for the purposes of collecting and aggregating data to populate the National Broadband Map, which was under the authority of NTIA. Most states opted to create a public-private partnership to generate their state's map, but many have failed to maintain their database since the funding from BTOP ended. The lack of funding prompted NTIA to transfer the National Broadband Map to the FCC.¹⁶ It was last updated in June 2014.

From the outset of ARRA's implementation, the Government Accountability Office stated that these programs would benefit from improved data collection in order to carry out their mission more effectively.¹⁷ Without accurate, up-to-date, and accessible data, these programs are destined to misallocate resources, leaving deserving areas unserved. One of the most important lessons to be learned from the 2009 programs is that access to accurate data is paramount to ensuring that investments - both private and federal - are targeting areas that need service improvements the most.

¹⁵ See, American Recovery and Reinvestment Act of 2009 (Pub.L. 111-5), February 17, 2009, available at <https://www.gpo.gov/fdsys/pkg/BILLS-111hr1enr/pdf/BILLS-111hr1enr.pdf>

¹⁶ See, Federal Communications Commission Report and Order, June 27, 2013 https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-87A1_Rcd.pdf

¹⁷ See, Government Accountability Office testimony before the Committee on Commerce, Science, and Transportation, U.S. Senate, October 27, 2009 available at <http://www.gao.gov/assets/130/123616.pdf>

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact David Redl or Greg Watson of the Committee staff at (202) 225-2927.