

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

MEMORANDUM

December 1, 2015

To: Subcommittee on Communications and Technology Democratic Members and Staff
Fr: Committee on Energy and Commerce Democratic Staff
Re: Subcommittee Markup of Broadband Infrastructure Discussion Draft

On Wednesday, December 2, 2015, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Communications and Technology will meet to conduct a markup of a discussion draft of H.R. ____, a bill to facilitate the deployment of broadband infrastructure and H.R. 1641, the Federal Spectrum Incentive Act of 2015.

I. SUMMARY OF DISCUSSION DRAFT TO FACILITATE DEPLOYMENT OF BROADBAND INFRASTRUCTURE

A. Section 2—Inventory of Federal Assets

Executive Order 13616¹ and the Broadband Opportunity Council² both recognize that Federal lands, buildings, and assets can serve as conduits for broadband deployment. Building off this prior work, the next steps include compiling an inventory of government assets that can support broadband.

The discussion draft would require all executive agencies to provide location information to the National Telecommunications and Information Administration (NTIA) regarding existing infrastructure and real property held by the Federal government (1) on which a communications facility could be constructed, or (2) that could otherwise be made available to an entity that constructs or operates communications facilities or provides communication service. The resulting database would be accessible to any entity that constructs or operates communications facilities or provides communications service.

¹ See Exec. Order No. 13616, 77 Fed. Reg. 36903 (June 20, 2014) (online at gpo.gov/fdsys/pkg/FR-2012-06-20/pdf/2012-15183.pdf).

² See Broadband Opportunity Council, *Broadband Opportunity Council Report and Recommendations* (Aug. 20, 2015) (online at whitehouse.gov/sites/default/files/broadband_opportunity_council_report_final.pdf).

B. Section 3—Tracking Applications

The discussion draft would require all executive agency Senior Real Property Officers (SRPOs) track permitting applications for communications facilities projects. SRPOs, which were created by Executive Order 13327, are already housed in many landholding agencies.³ Under the draft bill, SRPOs would be required to track the number of applications received, approved, and denied.

In addition, the SRPOs would be required to track (1) the reasons for denial if an application is denied, (2) the amount of time between the receipt of an application and a final decision, (3) whether any statutory deadline has been missed and why, and (4) the costs to the agency in processing siting applications.

Further, NTIA would be required to produce a report for Congress analyzing this data, and agencies would have to include their ability to process applications in a timely manner in their performance plans.

C. Section 4—Regulation of Pole Attachments

This discussion draft would also amend the Communications Act of 1934 to help better facilitate the deployment of broadband nationwide through the use of existing utility poles. As was recognized by the National Broadband Plan, access to these poles is critical to the success of broadband deployment. Among other things, this draft harmonizes some of the rates charged by pole owners and requires that states regulating their own poles do so on a non-discriminatory basis.

Additionally, the discussion draft would open up federally owned and municipal and cooperatively owned poles to those deploying communications facilities. The draft would further require the FCC to conduct a proceeding to review the costs associated with making new infrastructure ready to be affixed to poles. The draft bill would require the FCC to publish an inventory of poles and would require pole owners to report on the rates they charge. Finally, the draft would ensure that the tops of poles are considered part of the usable space of the poles.

D. Section 5—Common Forms and Standardized Fee Schedules

The discussion draft additionally seeks to improve upon the efforts Congress took to spur broadband deployment in Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012.⁴ Specifically, Section 6409 requires that the General Services Administration (GSA) draft common forms,⁵ draft master contracts,⁶ and set common fees for agencies to use when allowing

³ Exec. Order No. 13327, 69 Fed. Reg. 5897 (Feb. 4, 2004) (online at gpo.gov/fdsys/pkg/FR-2004-02-06/pdf/04-2773.pdf).

⁴ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(c) (2012).

⁵ *Id.* at § 6409(b)(2); *see also* § 6409(c)(3).

broadband companies to deploy infrastructure on government infrastructure or property.⁷ The draft would require that the GSA finish its work required under Section 6409 and would mandate that agencies use those common forms, master contract, and fees.

E. Sections 6-8 Streamlining Siting with the DOI, Forest Service, and DOD

The federal government owns roughly 28 percent of the land making up the United States.⁸ The discussion draft would require three of the largest landholding government agencies to explore ways to streamline their approval process for siting communications facilities on federal infrastructure or property.⁹ In particular, this draft focuses on the Department of the Interior (DOI), the Forest Service within the Department of Agriculture, and the Department of Defense (DOD).

The draft would institute “shot clocks” for certain siting decisions and would ensure that practices among these agencies field offices and installations are consistent and predictable. The draft bill would require these agencies to offer longer lease terms for infrastructure projects. It would also provide greater certainty for communications infrastructure deployers by making it more likely that lease applications will be renewed. Importantly, the bill would help agencies meet the new shot clocks by allowing the agencies to collect and retain fees assessed for processing communications facility siting applications.

F. Section 9 & 10—Streamlining NHPA and NEPA

To site broadband infrastructure on federal property, the affected agency generally must first complete the reviews Congress mandated under the National Environmental Policy Act (NEPA)¹⁰ and the National Historic Preservation Act (NHPA).¹¹ The discussion draft seeks to maintain these critical reviews, while streamlining the procedures involved, as they apply to communications infrastructure. These fundamental reviews must continue to protect our environment and historic places.

The draft would require that the DOI, Forest Service, and Advisory Council on Historic Preservation (ACHP) reach an agreement as to how the DOI and Forest Service can meet NHPA’s requirements. In addition, the draft would allow ACHP to exempt the DOD from the traditional NHPA review process for communications infrastructure projects that are approved as

⁶ *Id.* at § 6409(c)(1).

⁷ *Id.* at § 6409(b)(3).

⁸ *See generally* Congressional Research Service, *Federal Land Ownership: Overview and Data* (Feb. 8, 2012) (online at <https://fas.org/sgp/crs/misc/R42346.pdf>).

⁹ *Id.*

¹⁰ 42 U.S.C. § 4332(2)(C).

¹¹ 54 U.S.C. § 306108.

part of the ACHP's agreement with DOI and the Forest Service. The draft would also require the DOI and the Forest Service to adopt timelines to help those agencies efficiently complete these reviews.

The discussion draft would require the Council on Environmental Quality (CEQ) to look for ways to streamline and accelerate the NEPA process for siting communications infrastructure. The draft would then require the CEQ to implement any measures that it found would streamline the process. The draft bill also would require the Department of Homeland Security, DOD, DOI, and the Forest Service to conduct proceedings on how to streamline their own NEPA processes and whether to adopt the measures suggested by CEQ.

G. Section 11— Broadband Conduit Deployment Along Highways or “Dig Once”

The concept of “Dig Once” has been a subject of Congressional interest in the past, and was a component of Executive Order 13616. H.R. 3805, the Broadband Conduit Deployment Act of 2015, was introduced on October 22, 2015 by Representative Eshoo (D-CA) with the strong bi-partisan support of 27 Representatives and referred to the Committee on Transportation and Infrastructure. The bill requires an evaluation of the need for broadband conduit in covered highway construction projects and requires installation of broadband conduit beneath hard surfaces if the evaluation reveals a need within the next 15 years.

II. SUMMARY OF THE FEDERAL SPECTRUM INCENTIVE ACT OF 2015

The “Federal Spectrum Incentive Act” would create a new incentive auction for federal users to help encourage more efficient spectrum use. The bill would allow federal users to relinquish spectrum either by discontinuing operations on eligible frequencies entirely or by relocating operations to frequencies assigned to other federal users. The bill would require the Office of Management and Budget to transfer a percentage of the proceeds from a given spectrum auction back to the federal user that relinquished that spectrum.

Under current law, federal spectrum holders are eligible for reimbursement for the costs of sharing frequencies with non-federal users or relocating to other frequencies. H.R. 1641 would offer federal entities new incentives in order to free up additional spectrum for commercial use.

A similar bill, H.R. 3674, was introduced in the 113th Congress and favorably reported out of the full Committee on December 10, 2013. The Congressional Budget Office estimated that enacting H.R. 3674 would have increased net direct spending by \$30 million over the 2015-2024 period. The full House of Representatives did not consider that bill.