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Subject: Broadband Opportunity Council - American Cable Association Comments
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Attachments: [ACA Response to BOC Request for Comment - 6-10-2015.pdf](#)

To The Broadband Opportunity Council:

Please find attached the comments of the American Cable Association on the Broadband Opportunity Council's Request for Comment (Docket No. 1540414365-5365-01, RIN 0660-XC019).

Should you have any questions please contact Thomas Cohen at (202) 342-8518 or at tcohen@kelleydrye.com.

Sincerely,

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**Before the
RURAL UTILITIES SERVICE
DEPARTMENT OF AGRICULTURE
and
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
DEPARTMENT OF COMMERCE**

In the Matter of)	
)	
Broadband Opportunity Council)	Docket No. 1540414365-5365-01
Notice and Request for Comment)	RIN 0660-XC019
_____)	



**COMMENTS OF AMERICAN CABLE ASSOCIATION
ON THE BROADBAND OPPORTUNITY COUNCIL
NOTICE AND REQUEST FOR COMMENT**

The American Cable Association (“ACA”)¹ hereby files these comments in response to the Rural Utilities Service (“RUS”) and the National Telecommunications and Information Administration (“NTIA”) Broadband Opportunity Council (“BOC”) Notice and Request for Comment (“Request for Comment”) on “actions the federal government can take to promote broadband deployment, adoption, and competition, including by identifying and removing

¹ ACA represents over 800 independent cable operators, incumbent telephone companies, municipal utilities, and other local providers of video, broadband, and voice communications services using a variety of technology platforms. These providers offer service in smaller communities and rural areas, as well as by overbuilding other providers in urban and suburban markets. In aggregate, these providers pass nearly 19 million homes and serve nearly 7 million with video or broadband service. Approximately 2.75 million households subscribe to ACA members’ residential voice service, including non-nomadic VoIP service.

regulatory barriers unduly impeding investments in broadband technology” in furtherance of the March 23, 2015 Presidential Memorandum on the same subject.²

In these comments, ACA responds to the question presented in the Request for Comment: “What regulatory barriers exist within the agencies of the Executive Branch to the deployment of broadband infrastructure?”³ In short, ACA submits that despite the important steps that Executive Branch agencies⁴ have taken to identify and eliminate federal barriers to broadband infrastructure deployment, ACA members face continuing problems in obtaining timely and streamlined access to government rights of way and other federal government controlled infrastructure and facilities (“federal assets”). To address these problems, ACA recommends that the Executive Branch agencies: (1) assign project-specific, dedicated points of contact within each agency (including a coordinating agency for multi-agency reviews) to be responsible for the permitting process for access to federal assets; (2) implement a 150-day “shot clock” within which an agency must act on requests for permits for access to federal assets; and (3) report annually to NTIA on the average amount of time required during the previous calendar year to process permits for access to federal assets.⁵ Further, NTIA should maintain on a page on its website an up-to-date list of all dedicated points of contact at each agency and a compilation of each agency’s “time to permit” data. By implementing these reforms, the Executive Branch can streamline the permitting process, decrease the costs of deployments, and

² See Memorandum for the Heads of Executive Departments and Agencies, *Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training* (Mar. 23, 2015), available at <https://www.whitehouse.gov/the-press-office/2015/03/23/presidential-memorandum-expanding-broadband-deployment-and-adoption-addr>.

³ See Broadband Opportunity Council Notice and Request for Comment, Docket No. 1540414365-5365-01, 80 Fed. Reg. 23785 (Apr. 29, 2015).

⁴ In these comments, ACA uses the term “Executive Branch agencies” to mean those agencies that are members of the Broadband Opportunity Council.

⁵ NTIA should post this information on its website.

minimize delays and uncertainty that ACA members face in deploying their networks on or through federally owned or controlled assets.

I. ACA APPRECIATES EXECUTIVE BRANCH ACTIONS TO DATE, BUT BROADBAND PROVIDERS FACE CONTINUING PROBLEMS OBTAINING ACCESS TO FEDERAL ASSETS IN A TIMELY AND COORDINATED FASHION

ACA appreciates the efforts that the Executive Branch agencies have taken to lower government barriers to broadband deployment and agrees with many of the proposals set forth in the various progress reports and implementation plans of the Broadband Deployment on Federal Property Working Group and Steering Committee on Federal Infrastructure Permitting and Review Process Improvement.⁶ However, after discussions with ACA members, it is clear that providers still face significant difficulty obtaining timely and coordinated approvals for access to federal government assets. Therefore, the establishment of the Broadband Opportunity Council

⁶ See Executive Order 13604, *Improving Performance of federal Permitting and Review of Infrastructure Projects*, 77 Fed. Reg. 18887 (Mar. 22, 2012); The White House, *Implementing Executive Order 13604 on Improving Performance of Federal Permitting and Review of Infrastructure Projects: Federal Plan for Modernizing the Federal Permitting and Review Process for Better Projects, Improved Environmental and Community Outcomes, and Quicker Decisions* (June 2012), available at http://www.permits.performance.gov/sites/all/themes/permits2/files/federal_plan.pdf. (Unfortunately, while EO 13604 specifically identified broadband infrastructure deployment as a type of major infrastructure project, the Steering Committee's implementation of the federal action plan does not appear to have addressed barriers to broadband infrastructure deployment.); Report to the President, *Rebuilding America's Infrastructure: Cutting Timelines and Improving Outcomes for Federal Permitting and Review of Infrastructure Projects* (May 2013), available at <https://www.whitehouse.gov/sites/default/files/omb/reports/report-to-the-president-rebuilding-americas-infrastructure.pdf>; Executive Order 13616, *Accelerating Broadband Infrastructure Deployment*, 77 Fed. Reg. 36903 (June 14, 2012); Broadband Deployment on Federal Property Working Group, "Implementing Executive Order 13616: Progress on Accelerating Broadband Infrastructure Deployment" (Aug. 2013), available at https://www.whitehouse.gov/sites/default/files/microsites/ostp/broadband_eo_implementation.pdf; Presidential Memorandum, "Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures" (May 17, 2013), available at <https://www.whitehouse.gov/the-press-office/2013/05/17/presidential-memorandum-modernizing-federal-infrastructure-review-and-pe>; and Steering Committee on Federal Infrastructure Permitting and Review Process Improvement, "Implementation Plan for the Presidential Memorandum on Modernizing Infrastructure Permitting," available at <http://www.permits.performance.gov/pm-implementation-plan-2014.pdf>.

and this Request for Comment provides a real opportunity for the federal government to identify and address delays and costs that broadband providers face in deploying their networks using federal assets.

For ACA members seeking permits from private entities in the normal course of commercial dealings, the standard timeframe for approval for access to private rights of way is at most 30 days. In contrast, the process for obtaining permits for access to federal assets can take months, if not years, particularly in rural and remote areas. Multi-agency approval processes can further delay deployment, leading to duplicative and uncoordinated reviews and increased costs for providers. As a result of these delays, providers are either forced to wait for approval or seek more costly private-sector alternatives to deploy high-speed broadband infrastructure to the communities that demand it.

For example, ACA member Sierra Nevada Communications (“SNC”) faced a particularly egregious delay by a federal government gatekeeper, the U.S. Forest Service (“UFS”) within the U.S. Department of Agriculture.⁷ SNC sought to provide high-speed, wireline broadband service to the 5,000 residents of Long Barn, Cold Springs, and Pinecrest/Strawberry, towns in or bordering California’s Stanislaus National Forest. For years, these residents received only low-speed wireless access because of the surrounding forestland. And yet, despite requests from consumers for high-speed broadband, SNC was unable to deploy service for over seven years after applying for access to rights of way because UFS failed to approve SNC’s permit application.

⁷ See *In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WC Docket No. 11-59, Reply Comments of the American Cable Association, 8-9 (Sept. 30, 2011).

SNC is not alone in facing permitting delays from the UFS. ACA member Vyve Broadband has faced delays of over a year in its attempt to access conduit in rights of way from UFS to deploy broadband through an existing tunnel in the Cumberland Gap National Historic Park in Tennessee. While it waits for UFS approval, Vyve has had to lease capacity from another provider at a significant cost.⁸ If Vyve had some assurance that UFS would process its application in a more timely fashion, it could lower these costs and more quickly address the needs of the communities it serves.

ACA member Eagle Communications encountered unjustified delays in obtaining approvals to access land in the jurisdiction of the U.S. Army Corps of Engineers within the Department of Defense.⁹ Eagle attended a pre-application meeting and submitted an application to access two miles of road controlled by the Corps as part of a project to run fiber optic cable for broadband services in Clay County, Kansas. Although the project was small and not complicated and the Corps did not conduct studies or engage in any engineering work, Eagle did not receive approval of its application for twelve weeks.

Finally, because the federal government owns or administers much of the land in Alaska (particularly above the Arctic Circle), providers there face unique restrictions and processes when obtaining federal approval to deploy broadband infrastructure. For instance, ACA member GCI has found that federal restrictions on land use and a burdensome permitting process in Alaska often raise costs to the point where new deployments and upgrades are infeasible. This is particularly true where infrastructure projects require GCI to obtain approvals from multiple

⁸ These higher costs are passed through to consumers which result in higher retail prices and lower adoption rates, both of which run counter to the objectives of the Administration.

⁹ *See id.* at 7-8.

federal agencies.¹⁰ As a consequence, GCI often must re-route its networks through state and Alaska Native lands, where the costs and duration of the permitting process better support the business case for deployment.

These are just a few examples of problems ACA members have encountered in seeking access from Executive Branch gatekeepers with respect to rights of way, which, as a result, inhibit the provision of new broadband services. Accordingly, the BOC should propose immediate, concrete actions to remove these barriers to deployment and ensure that all Americans can benefit from access to high-speed connectivity. As ACA explains in the next section, there are “tried and true” remedies – ones used elsewhere – that can lead to beneficial outcomes for private providers and their customers and for the federal government.

II. TO ADDRESS FEDERAL REGULATORY BARRIERS TO BROADBAND DEPLOYMENT, THE EXECUTIVE BRANCH SHOULD REQUIRE AGENCIES TO HAVE DEDICATED PERSONNEL FOR THE PERMITTING PROCESS AND SHOULD ADOPT FIRM DEADLINES FOR PERMIT APPROVALS

To improve the timeliness and coordination of the permitting process for access to government rights of way and other government infrastructure and facilities, ACA recommends the following improvements to the federal permitting process. First, Executive Branch agencies should assign dedicated personnel with sufficient authority to oversee and have responsibility for acting on permit applications from private sector firms. Where the permitting process involves a single agency, the agency should assign a dedicated person within the agency to serve as the point of contact. This point of contact should have permitting approval as his or her primary job

¹⁰ ACA also has spoken to a member that has received support from the Rural Utilities Service and that has experienced delays in coordinating its network build with federal and state agencies responsible for ensuring compliance with environmental and historic designation laws and regulations. It too believes the multi-agency coordination process can and should be streamlined to facilitate deployments, including by dedicating personnel to be responsible for and undertake the task.

function, and should be responsible for maintaining an open channel of communication with the applicants to keep them apprised of developments in the permitting process. Where the permitting process involves multiple agencies, the government should assign an interagency team to coordinate and consolidate the review process, with one agency serving as the coordinating agency and a single individual from that agency serving as the dedicated point of contact for the review. Regardless of whether the review involves one or more agencies, the dedicated point of contact should be responsible for ensuring that the review is conducted in an efficient and timely manner.

A dedicated point of contact will provide clarity and coordination to a process that historically has been both burdensome and excessively complicated. Further, this proposal is consistent with the Steering Committee's recommendations¹¹ and the broader goals of the President's efforts to streamline review processes and promote broadband infrastructure deployment. For these reasons, the BOC should recommend that Executive Branch agencies establish dedicated points of contact to streamline the permitting process.

Second, the BOC should have agencies adopt a 150-day shot clock on acting on permits for access to federal assets. As stated above, commercial approvals generally take no more than 30 days. While ACA submits that the federal government should strive to reach parity with these average private sector approval timelines, it recognizes that given a variety of important federal interests—including environmental protection and the preservation of historic properties—some flexibility is warranted. If the agency ultimately rejects the application, it should provide specific reasons for the rejection, identify steps to cure any issues with the

¹¹ See Implementation Plan at 10.

application, and set an abbreviated timeline (e.g., 30 days) within which to resubmit a corrected application for expedited review.¹²

This 150-day shot clock is consistent with the FCC’s maximum timeframe available for non-collocated wireless facilities siting, as well as the maximum timeframe for wireline pole attachment requests under its pole attachment rules.¹³ Further, the shot clock is approximately five times the maximum length of time that ACA members tend to experience in the context of private rights of way, and therefore should address the vast majority of contingencies, including environmental reviews and concurrent multi-agency approval processes.¹⁴ At the same time, this

¹² In the case of an incomplete application, the agency should be required to notify an applicant that its application is incomplete within 30 days from the date the applicant first submits its application. The notification should specify why the application is incomplete, provide specific steps that the applicant can take to complete its application, and set a timeframe within which the applicant may supplement its application. During this time period, the 150-day timeline should be tolled. If the agency fails to notify the applicant that its application is incomplete within 30 days, the application should be deemed complete.

¹³ In 2009, the FCC issued a Declaratory Ruling that imposed a 90-day shot clock for local governments to act on an application to collocate wireless facilities, and a 150-day shot clock for any other wireless facility application. *See Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165, Declaratory Ruling, FCC 09-99 (rel. Nov. 18, 2009). That same year, the FCC updated its pole attachment rules, adopting a four-stage timeline that, for most wireline attachment requests, provides a maximum of 148 days for attachers to access privately owned utility poles. *See In the Matter of Implementation of Section 224 of the Act, et al.*, WC Docket No. 07-245, *et al.*, Report and Order and Order on Reconsideration, FCC 11-50 (rel. Apr. 7, 2011). In 2014, the FCC took steps to relieve providers of small wireless technologies of certain environmental review requirements, and further modernized its shot-clock rules. *See In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, et al.*, WT Docket No. 13-238, *et al.*, Report and Order, FCC 14-153 (rel. Oct. 21, 2014) (“2014 Wireless Siting Order”).

¹⁴ In its August 2013 Progress Report, the Working Group stated that it was developing mechanisms to streamline environmental and historic preservation review processes, including exemptions for activities that would not normally result in significant environmental effects. *See* Progress Report at 10-11. As the Working Group recognizes, “the time required to complete the required Section 106 review may . . . place a tremendous burden on both applicants and Federal agencies tasked with, or assisting with, broadband implementation.” *See id.* at 11. ACA supports this effort, which is consistent with actions the FCC has taken to limit unnecessary environmental reviews in the wireless facilities siting context. *See, e.g.*, 2014 Wireless Siting Order, ¶¶ 23-105.

shot clock would exert a significant downward pressure on some of the more egregious delays that providers experience when seeking federal government approvals. Therefore, the BOC should recommend that all Executive Branch agencies establish a 150-day shot clock to ensure timely review of applications for access to federal assets.

Finally, to provide greater transparency about the permitting process and compliance with the shot clock, ACA recommends that: (1) each agency report annually to NTIA on the average time required during the previous year to process permits for access to federal assets, and then NTIA post this information on its website; and (2) NTIA maintain on a page on its website an up-to-date list of all dedicated points of contact at each agency and a compilation of each agency's "time to permit" data for the previous year.

III. CONCLUSION

ACA appreciates the efforts that the Executive Branch has taken to identify and eliminate barriers to broadband deployment, but much work remains to be done. In this filing, it has provided two recommendations that would substantially improve the permit approval process. ACA stands ready to work with the BOC as its work continues.

Respectfully submitted,



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