

From: [Gretchen Lohmann](#)
To: [BOCrfc2015](#)
Subject: Broadband Opportunity Council
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Attachments: [061015 NCTA RUS and NTIA Broadband Opportunity Council Comments.pdf](#)

Good afternoon:

Attached are the comments of the National Cable & Telecommunications Association in the Broadband Opportunity Council proceeding.

Gretchen M. Lohmann
Legal Assistant
National Cable & Telecommunications Association
25 Massachusetts Ave., N.W. – Suite 100
Washington, D.C. 20001-1431
Ph: 202-222-2445; 202-222-2452 (Direct)

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**Before the
Rural Utilities Service
DEPARTMENT OF AGRICULTURE
Washington, D.C. 20036**

**and
National Telecommunications and Information Administration
DEPARTMENT OF COMMERCE
Washington, D.C. 20230**

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

**COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) applauds the President’s creation of the Broadband Opportunity Council (Council) and welcomes this opportunity to provide comment on steps government agencies can take to eliminate barriers to the deployment and adoption of broadband throughout the nation.¹ Since 1996 the U.S. cable industry has invested more than \$230 billion in infrastructure, making high-speed broadband available to 93 percent of the nation’s households. Cable operators also continue to provide Americans with faster and faster broadband speeds, including doubling the fastest available broadband speeds every year, on average. And cable operators have deployed hundreds of thousands of Wi-Fi hotspots, increasing the availability of mobile broadband as well. Many of NCTA’s cable operator members also have taken a leading role in providing affordable broadband services to low-income Americans, including Bright House Networks, Cox Communications, Eagle Communications, Mediacom, and Suddenlink through

¹ Broadband Opportunity Council Notice and Request for Comment, 80 Fed. Reg. 23785 (Apr. 29, 2015) (Request for Comment).

Connect2Compete, Comcast through its Internet Essentials, and Midcontinent through its Broadband Lifeline Assistance Program.

It is against this backdrop that we provide the Council with suggestions on ways that the federal government can aid the continued private investment in, and deployment and availability of broadband facilities to serve all Americans. We urge the Council to recommend removing federal executive agency regulatory barriers to broadband deployment, to work with state and local governments to remove barriers to broadband deployment, and to ensure that government actions complement and encourage private investment in broadband.

I. ADDRESSING REGULATORY BARRIERS TO BROADBAND DEPLOYMENT

Request for Comment Question 6: What regulatory barriers exist within the agencies of the Executive Branch to the deployment of broadband infrastructure?

NCTA's cable operator members have encountered instances where Executive Branch regulations have impeded their ability to deploy broadband infrastructure. In particular, cable operators have experienced delay and difficulty in receiving permits and access to rights of way to deploy broadband facilities from the Department of Defense's Army Corps of Engineers and the National Guard, and the Department of the Interior's National Park Service and Bureau of Land Management. The Council should recommend that these agencies streamline their processes for approving requests related to broadband deployment, such as by setting a specific, reasonable timeframe in which permits will be issued, or by which they will be deemed granted if no other action is taken.

In some cases cable operators must deal with multiple federal agencies, each with its own permitting or authorization process and timeframe, to deploy broadband in sparsely-populated areas, including throughout the majority of Alaska. These duplicative regulatory processes raise providers' costs and reduce the incentive and economic case for deploying in these areas. As a

prior interagency group recommended, federal review of broadband infrastructure projects should be coordinated by identifying for each project a specific lead federal agency, as well as implementing a coordinated timeline for regulatory approvals.²

Cable operators also have encountered difficulty under the Department of Defense's rules in deploying broadband services on military bases. Operators have come up against long and protracted permitting processes, including separate authorizations required for services offered over the same facilities. In some cases, cable operators have been prohibited from deploying Wi-Fi facilities for use by Americans living on military bases. The Council should encourage the Department of Defense to reexamine its rules and policies regarding the permitting and deployment of broadband within bases to enable our military personnel and their families to receive the high-speed broadband services that are available to other Americans.

Another way in which the federal government could promote broadband deployment would be to reduce barriers to the use of railroad rights of way on federal land for broadband facilities. Cable operators have encountered difficulties in crossing railroad rights of way that have hindered their ability to deploy broadband. Specifically, the application process to cross a railroad right of way can take several months to process, and cable operators are facing multiple excessive recurring and non-recurring charges to cross the right of way with a small pipe, which generally is less than four inches in diameter, used to house the fiber and coaxial cable facilities. The Department of the Interior's Bureau of Land Management should examine these practices and take steps to ensure that broadband deployment is not impeded by fees and application delays associated with railroad rights of way on federal lands.

² Steering Committee on Federal Infrastructure Permitting and Review Process Improvement, *Implementation Plan for the Presidential Memorandum on Modernizing Infrastructure Permitting*, 7-8, <http://www.permits.performance.gov/pm-implementation-plan-2014.pdf> (May 2014).

In addition, the Department of Commerce's National Telecommunications and Information Administration (NTIA) could enhance the deployment of mobile broadband by working with the Federal Communications Commission (FCC) to make more unlicensed spectrum available for Wi-Fi networks. Cable operators have invested heavily in the development of Wi-Fi broadband networks throughout the country. As Americans increase their use of Wi-Fi-enabled devices such as smartphones, tablets, laptops, and portable media players, providers of Wi-Fi networks need more unlicensed spectrum to accommodate the traffic that results from growing demand. Although the Wi-Fi industry primarily has used the 2.4 GHz spectrum band in the past, many device manufacturers and service providers are turning to the 5 GHz band to meet growing demand as the 2.4 GHz band reaches exhaustion. The 5 GHz band is particularly attractive for new Wi-Fi deployments because it provides a large amount of unlicensed spectrum, is compatible with existing Wi-Fi standards, and because 5 GHz capability is already built into many consumer devices used worldwide. In addition, the next-generation Wi-Fi standard—IEEE 802.11ac—is built exclusively for the 5 GHz band and will rely on wide channels that can only be achieved in the 5 GHz band to deliver gigabit Wi-Fi. Given this, NTIA should work with the FCC to facilitate spectrum sharing between incumbent spectrum-holders and Wi-Fi operators to ensure that gigabit Wi-Fi services can be deployed in the 5 GHz band.

Request for Comment Question 9: Are there specific regulations within the agencies of the Executive Branch that impede or restrict competition for broadband service, where residents have either no option or just one option? If so, what modifications could agencies make to promote competition in the broadband marketplace?

The Department of Agriculture’s Rural Utilities Service (RUS) administers the Rural Broadband Access Loan and Loan Guarantee program, which is meant to subsidize broadband deployment in rural areas. Unfortunately, the program hinders competition for broadband. The program limits funding eligibility only to incumbent phone companies, so that other types of broadband providers seeking to serve rural areas must do so with access only to higher-cost private capital. Furthermore, as the Department of Agriculture’s Inspector General has repeatedly noted, the program has provided phone companies with funding to serve areas where broadband is being provided by unsubsidized providers.³ In discussing this practice, the Inspector General was “concerned because the overwhelming majority of communities (77 percent) receiving service through the broadband program already have access to the technology, without RUS’ loan program. Moreover, the legal ramifications of subsidizing some providers in a given area, but not others, have proved problematic.”⁴ This reduces the ability of the unsubsidized providers to compete in these areas, tipping the scales in favor of RUS funded phone companies.

The Council should recommend that RUS reform its broadband loan program to make funding available equally to all broadband providers, and limit funding to areas where unsubsidized providers do not operate.

³ United States Department of Agriculture, Office of Inspector General, Southwest Region, Audit Report, Rural Utilities Service Broadband Loan and Loan Guarantee Program, Report No. 09601-4-Te, <http://www.usda.gov/oig/webdocs/09601-04-TE.pdf> (September 2005); United States Department of Agriculture, Office of Inspector General, Southwest Region, Audit Report, Rural Utilities Service Broadband Loan and Loan Guarantee Program, Report No.09601-8-Te, <http://www.usda.gov/oig/webdocs/09601-8-TE.pdf> (March 2009) (2009 IG Report).

⁴ 2009 IG Report at 6.

II. ISSUES RELATED TO STATE, LOCAL, AND TRIBAL GOVERNMENTS

Request for Comment Question 18: What barriers exist at the state, local, and/or tribal level to broadband deployment and adoption? How can the federal government work with and incentivize state, local, and tribal governments to remove these barriers?

As discussed above, cable operators have experienced difficulty and delays in receiving necessary permits and right-of-way approvals from federal government agencies, but these issues also exist at the state and local government level as well. State departments of transportation and city and municipal governments often have lengthy and burdensome permitting and review processes associated with the deployment of broadband facilities. Easing restrictions on and allowing access to municipally-owned facilities, such as streetlights, could increase the ability of cable operators to deploy Wi-Fi access points to consumers, increasing the availability and reliability of mobile broadband services. The Council should encourage state and local governments to examine their regulations and processes that delay or impede broadband deployment, with an eye toward streamlining and encouraging deployment as much as possible.

CONCLUSION

As explained above, the Council should act quickly to recommend ways to streamline regulations that currently hinder broader availability of broadband services to all Americans.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris
Jennifer K. McKee
National Cable & Telecommunications
Association
25 Massachusetts Avenue, NW – Suite 100
Washington, D.C. 20001-1431

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