



IMPLEMENTATION OF MOBILE NOW ACT SECTION 606(c) REQUIREMENTS

On March 23, 2018, President Trump signed into law the Consolidated Appropriations Act of 2018, which provided appropriations through fiscal year 2018.¹ Division P, the RAY BAUM’s Act, contains several Titles that provide directions regarding communications, networks, mobile service, Wi-Fi, and broadband.² Title VI of Division P, the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (generally known as the MOBILE NOW Act), has 23 sections that specifically focus on mobile or fixed wireless broadband spectrum, broadband infrastructure, and communications facility installations.³

Section 606 of the MOBILE NOW Act contains several provisions intended to facilitate the deployment of communications facility installations on federal property. Section 606(c), in particular, directs the National Telecommunications and Information Administration (NTIA) to coordinate with the Department of the Interior (DOI), the Department of Agriculture (USDA), the Department of Defense (DOD), the Department of Transportation (DOT), the Office of Management and Budget (OMB), and the General Services Administration (GSA) to develop recommendations for streamlining processes for considering applications to locate broadband facilities on federal property within two years from the date of enactment (March 23, 2020).⁴ The MOBILE NOW Act further directs NTIA, within two years of developing these recommendations to streamline applications processes, to report to Congress on the status of their implementation and any process improvements resulting from such recommendations.⁵

Prior to the passage of the MOBILE NOW Act, the Trump Administration established the American Broadband Initiative (ABI) as its signature strategy to stimulate increased private investment in broadband infrastructure and services to fill broadband connectivity gaps in America. Since its formation, the ABI has been working diligently to fulfill its mission of ensuring that government processes are clear and responsive to stakeholders, that government

¹ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348 (2018), *available at* <https://www.congress.gov/115/plaws/publ141/PLAW-115publ141.pdf>.

² *Id.* at Division P, tit. VI, MOBILE NOW Act, 132 Stat. 1097.

³ Section 606(a) of the MOBILE NOW Act defines a community facility installation as: “(A) any infrastructure, including any transmitting device, tower, or support structure, and any equipment, switches, wiring, cabling, power sources, shelters, or cabinets, associated with the licensed or permitted unlicensed wireless or wireline transmission of writings, signs, signals, data, images, pictures, and sounds of all kinds; and (B) any antenna or apparatus that—(i) is designed for the purpose of emitting radio frequency; (ii) is designed to be operated, or is operating, from a fixed location pursuant to authorization by the Federal Communications Commission or is using duly authorized devices that do not require individual licenses; and (iii) is added to a tower, building, or other structure.” 47 U.S.C. § 1455(d)(1).

⁴ MOBILE NOW Act § 606(c)(2)(A)-(B), 132 Stat. 1103.

⁵ *Id.* at § 606(c)(2)(C).





assets provide the greatest possible benefit to the public, and that the government is performing its duties as a steward of taxpayer funds. In February 2019, the ABI published its Milestones Report, outlining a vision for how the federal government can encourage the expansion of broadband access and actions that agencies are taking to increase private-sector investment in broadband.⁶ The ABI is comprised of three major workstreams: Leveraging Federal Assets for Broadband Deployment, Streamlining Federal Permitting (SFP), and Maximizing the Impact of Federal Funding. Each of these workstreams is led by and comprised of agencies with particular equities and expertise in that area.

The ABI's Streamlining Federal Permitting Workstream is striving to make government processes clear, transparent, and responsive to stakeholders. By reducing permitting delays, minimizing paperwork, and designating clear federal points of contact, federal agencies will enable broadband providers to focus on building broadband networks more quickly. The Department of Homeland Security (DHS) and DOI co-chair this workstream. The other workstream member agencies include: USDA, Department of Commerce (NTIA and the First Responder Network Authority (FirstNet Authority)), DOD, DOT, GSA, OMB, the Department of Veterans Affairs, the Advisory Council on Historic Preservation (ACHP), and the Council on Environmental Quality (CEQ). The Federal Communications Commission (FCC), as an independent regulatory agency, participates in this workstream as a consulting member.

The ABI's Streamlining Federal Permitting Workstream serves as the vehicle to implement section 606(c) of the MOBILE NOW Act because the agencies enumerated in the statute and tasked with developing recommendations are all members of this workstream.

Moreover, on December 20, 2018, President Trump signed the Agriculture Improvement Act of 2018 (the Farm Bill) into law.⁷ Title VIII, Subtitle G, Section 8705, of the Farm Bill directs the USDA's Forest Service (USFS) to issue regulations that streamline the process for evaluating applications for communications facilities on National Forest System (NFS) lands. Specifically, Section 8705(b) and (c) requires the USFS to issue regulations that:

- (1) Streamline the process for evaluating applications to locate or modify communications facilities on NFS lands;

⁶ On February 13, 2019, the ABI was launched with the release of the Milestones Report. See ABI, *Milestones Report* (Feb. 2019), available at: https://www.ntia.doc.gov/files/ntia/publications/american_broadband_initiative_milestones_report.pdf.

On June 25, 2020, the ABI released a Progress Report to provide an update on its work to date in fulfilling the commitments described in the Milestones Report. See ABI, *Progress Report* (June 2020), available at: https://www.ntia.doc.gov/report/2020/ABI_Progress_Report.

⁷ Agriculture Improvement Act of 2018, Pub. L. 115-334, 132 Stat. 4490 (2018), available at <https://www.congress.gov/115/plaws/publ334/PLAW-115publ334.pdf>.





- (2) Ensure, to the maximum extent practicable, that the process is uniform and standardized across USFS;
- (3) Require that the applications for communications uses on NFS lands be evaluated and granted on a competitively neutral, technologically neutral, and non-discriminatory basis;
- (4) Include procedures for tracking applications for communications uses;
- (5) Include a minimum term of 15 years for communications use authorizations;
- (6) Require that a processing fee be charged for an application for a communications use;
- (7) Provide for prioritizing or streamlining evaluation of applications for communications uses in previously disturbed NFS rights-of-way; and
- (8) Require USFS to charge a programmatic administrative fee for communications use authorizations to cover the costs of administering its communications site program.

Additionally, Section 8705(d) of the Farm Bill directs USFS to examine how it can consider multiple communications facility applications simultaneously and eliminate overlapping requirements among organizational units in authorizing communications facilities on NFS lands. Several of the Farm Bill directives to USFS mirror the requirements enumerated in the MOBILE NOW Act. USFS issued a notice in the Federal Register seeking comments on its proposal to amend its existing regulations to implement these Farm Bill directives and streamline its procedures for evaluating applications to locate or modify communications facilities on NFS lands.⁸ The comment period ended on November 25, 2019. USFS received comments from eight parties. In April 2020, USDA, on behalf of USFS, issued a Final Rule to implement that part of Section 8705 of the Farm Bill providing for streamlining the USFS's procedures for evaluating applications to locate or modify communications facilities on NFS lands.⁹

Pursuant to the MOBILE NOW Act's directives, the Streamlining Federal Permitting Workstream focused on the following elements to develop the recommendations called for under section 606(c):

1. Procedures for tracking broadband facility applications;
2. Methods to reduce application review and approval timelines;
3. Policies expediting renewals of easements, licenses or other authorizations for broadband facility installations; and
4. Policies prioritizing or streamlining construction permits in previously-disturbed rights-of-way.

⁸ See USFS, *Land Uses; Special Uses; Streamlining Processing of Communications Use Applications*, Proposed Rule, 84 Fed. Reg. 50703 (Sept. 25, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-09-25/pdf/2019-20742.pdf>.

⁹ See USFS, *Land Uses; Special Uses; Streamlining Processing of Communications Use Applications*, Final Rule, 85 Fed. Reg. 19660 (Apr. 8, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-04-08/pdf/2020-07280.pdf> (*USFS Streamlining Final Rule*).





Using these elements as a guide, the Streamlining Federal Permitting Workstream has developed the following recommended agency actions. Some of these activities have already been implemented or are currently in progress as noted below. The Streamlining Federal Permitting Workstream will continue to examine the feasibility of implementing the other enumerated recommended actions. For the next two years, the Streamlining Federal Permitting Workstream will monitor the status of these actions and report on any process improvements resulting from their implementation.

Recommended Agency Actions

1. Procedures for the tracking of applications

- a) Executive Order (E.O.) 13821, Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America, requires GSA to collect data and compile reports on Agency permitting timeframes, including the number of applications received, the number approved, the number rejected, the basis for any rejection, and the number of working days each application was pending before being approved or rejected. Since December 2018, GSA has submitted six quarterly reports to OMB. The October 2019 quarterly report featured several key updates, for example, improved tracking and accounting of pending applications and a new data summary table to capture these findings more efficiently. For the February 2020 quarterly report, GSA developed a more comprehensive approach to catalog the various stages that permits go through in the application process by adding two new categories—(1) date withdrawn and (2) date authorized. These revisions to the quarterly survey will standardize application timelines across agencies, helping to reduce misunderstandings between the reporting agencies and GSA. The changes that GSA has introduced to the quarterly survey are a product of the collaborative efforts of GSA and the workstream members to continuously improve the data collection process and facilitate the tracking of permitting applications.
- b) USFS added a new subparagraph to its regulations at 36 CFR § 251.54(g)(4) establishing a process for tracking applications for communications uses that (a) identifies the number of applications received, approved, and denied; (b) for applications that are denied, describing the reasons for the denial; and (c) describing the amount of time between receipt of an application and grant or denial of the application.¹⁰
- c) USFS published proposed revisions to its Forest Service Handbook (FSH) 2709.11, Chapter 90 in the Federal Register on June 4, 2020 to implement that part

¹⁰ See *id.* at 19661-62, 19666.





of the 2018 Farm Bill calling for streamlining the procedures for evaluating applications to locate or modify communications facilities on lands managed by the agency.¹¹ The proposed revisions include (1) establishing direction for a standard 30-year term for communications use authorizations, (2) establishing responsibility for a tracking system for communications use applications; (3) establishing procedures for inputting data needed to track communications use applications; (4) providing authorization holders at a communications site 30 days to review and comment on new communications site management plans and modifications to existing communications site management plans that would change how the site is managed; and (5) implementing new procedures to expedite requests for co-locating communications uses in or on existing communications facilities. The deadline for comments ended July 6, 2020. USFS received comments from five parties.

- d) GSA created a national antenna application-tracking sheet that it distributed to its regional offices for use in January 2020. The tracking sheet will measure the amount of time it takes for GSA regions to reject or approve and then process antenna-siting applications.
- e) The Federal Permitting Improvement Steering Council (FPISC) maintains the Federal Infrastructure Permitting Dashboard, an online tool for Federal agencies, project developers, and interested members of the public to track the Federal government's environmental review and authorization process for large or complex infrastructure projects, part of a government-wide effort to improve coordination, transparency, and accountability (<https://www.permits.performance.gov>). SFP members will explore the feasibility of leveraging this online tool to track applications for siting communications facilities on federal property.
- f) DOI's Bureau of Land Management (BLM) is taking steps to update its LR2000 tracking system and transition to a new system, the Mineral and Lands Record System (MLR). Additionally, on April 14, 2020, BLM launched an online system for the filing of a Standard Form (SF)-299 for communications uses that will further assist in the tracking of applications. SFP members will explore the feasibility of expanding an application tracking system to other DOI bureaus and other federal property-managing agencies.

¹¹ See USFS, *Special Uses; Processing of Applications, Issuance of Authorizations, and Communications Site Management*, Issuance of proposed directives; notice of availability for public comment, 85 Fed. Reg. 34378 (June 4, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-06-04/pdf/2020-11830.pdf>.





2. Methods to reduce the amount of time between the receipt of an application and the issuance of a final decision on an application (270 days or less)

- a) Establish the SF-299 as the Common Form – In February 2020, USFS, working with GSA and other SFP workstream members, obtained OMB approval of revisions to the SF-299 to make it the Common Application Form used by the private sector to seek permission to deploy communications infrastructure on federal property. The SF-299 will be the standard form used by the federal property managing agencies that use an application to initiate the siting process, including DOI and GSA. USFS solicited public comment on the SF-299 revisions through publication in the *Federal Register*. The form can be accessed on the USFS website at https://www.fs.fed.us/specialuses/special_comm.shtml. The form can also be accessed on NTIA’s BroadbandUSA website at <https://broadbandusa.ntia.doc.gov/ntia-resources/federal-permitting-overview>.
 - Agencies anticipate that stakeholders will benefit from having a common application form that all agencies authorizing communications facilities or uses on federal assets accept by reducing costs and processing times.
 - Agencies will be encouraged to further improve their processes by accepting the SF-299 electronically.
- b) Federal property-managing agencies will establish the 270-day standard per the MOBILE NOW Act.
 - In 2018, USFS amended FSH 2709.11, Chapter 90 to adopt 270 days as the standard permit application processing time. In 2020, USDA issued a Final Rule to amend Forest Service regulations to adopt 270 days as the standard permit application processing time.¹²
 - BLM proposes changing its rule to implement a customer service standard consistent with the MOBILE NOW Act.
- c) DOD continues to assess, evolve, seek efficiencies, and is committed to meeting all streamlining milestones of the ABI. DOD permitting processes for commercial broadband services applications are now entirely in accordance with the MOBILE NOW Act, chiefly so that no DOD Component, including the Military Departments of the Army, Air Force, and the Navy, may take more than 270 days to fully process all such applications. Specific updates follow:
 - Army: On September 23, 2020, the Army issued a memorandum directing the SF-299 be used for broadband and telecommunications applications and rescinded the templates that it formerly used. The Army has directed that all new or renewal requests for telecommunications and/or broadband

¹² See USFS Streamlining Final Rule, 85 Fed. Reg. at 19662, 19666.





services that require access to Army real property (facilities or land) will be initially received by, or directed to, and processed through, the Installation Directorate for Public Works (DPW). Responses to requests will be returned within 60 days, and include whether the application has been accepted, and if conceptually approved, expected process and timeline for project approval.

- Air Force: The Air Force informed GSA that it would use a substantially similar form for applications and continues to exploit a competitive process in compliance with granting statute, Title 10 USC 2667, for applications and processing requests to access Air Force installations for broadband. Also, the Air Force realized efficiencies by delegating authority to grant five-year leases (under Title 10 USC 2667) to installation commanders. Post-competition, the granting process takes approximately 180 days.
- The Department of the Navy (DON) continues to use and evolve its streamlined deployment process (reduced to less than one year with 2016 guidance) that expedites the deployment of commercial wireless broadband on Navy and Marine Corps installations. DON has successfully applied this policy and process to issue approximately 40 easements and leases to wireless broadband companies on approximately 20 Navy and Marine Corps installations. Easement and leasing activities for other installations are underway. DON is currently revising the 2016 policy to better accommodate the evolution of broadband to include 5G and associated distributed antenna systems. As allowed by the MOBILE NOW Act, this policy revision will include a form/template similar to the SF-299 that captures information necessary and unique to DON requirements for issuing real estate agreements, including mission assurance requirements. The policy revision also provides the process for review of equipment proposed for installation by commercial entities to ensure mission assurance of the host military installation. Additionally, within the DON, local Commanders have authority and responsibility for the electromagnetic spectrum on their installations. To expedite activation of 5G/broadband service, in May 2020, the DON established a policy that local Commanders may issue an interim authority to radiate pending ongoing electromagnetic interference studies provided specific electromagnetic radiation hazards to personnel, fuel, and ordnance have been addressed successfully.
- NTIA will cross-post this DOD information on the one-stop site for federal broadband permitting information on the BroadbandUSA website: <https://broadbandusa.ntia.doc.gov/ntia-resources/federal-permitting-department-defense-dod>.





- Additionally, DOD, through its Joint Spectrum Center, completed in September 2019 a streamlined process for analyzing the potential for electromagnetic interference from the installation of mobile cellular broadband infrastructure and services on DOD military bases and other federal property. DOD must analyze new wireless deployments on its military bases to de-conflict or mitigate electromagnetic interference to or from existing and planned DOD dependent spectrum systems, and to prevent radiation hazards to personnel, fuel, and ordnance. The DOD Joint Spectrum Center expedited the system-based analysis approach that resulted in significant time-savings of many months, enabling faster rollouts of broadband infrastructure and services on military bases.
- d) GSA updated the standardized US Government Lease of Real Property for Communications Space in Fiscal Year 2020, including adding references to the term “Communications Facility Installation” as defined in the MOBILE NOW Act. GSA posted the revised templates to the telecommunications page of its website: <https://www.gsa.gov/real-estate/real-estate-services/for-businesses-seeking-opportunities/wireless-telecommunications-installation>.
- e) CEQ published its final rule to update its National Environmental Policy Act (NEPA) implementing regulations in the Federal Register on July 16, 2020. The rule became effective September 14, 2020. CEQ’s final rule will modernize the NEPA regulations by simplifying and clarifying the requirements, and incorporating key elements of President Trump’s One Federal Decision policy. The final rule codifies Supreme Court and other case law, updates the regulations to reflect current technologies and agency practices, eliminates obsolete provisions, and improves the format and readability of the regulations. Additional information is available at <https://www.whitehouse.gov/ceq/nepa-modernization>.
- f) The federal property-managing agencies will explore the feasibility of accepting electronic filings of the SF-299, including attachments.
 - BLM proposes a rule change to accept the electronic filing of the SF-299 application.
 - BLM proposes a rule change to require the inclusion of geographic information system (GIS) information with applications.
- g) BLM proposes a rule change to act on an assignment application within 90 days, or the assignment is considered approved.
- h) USFS collected, verified, and mapped its communications sites and publicly released its Communications Sites Map Viewer in October 2019 for use by





internal and external customers. This mapping tool provides basic information on USFS communications sites, including their geographical location, site designation, and local contact information.

- This information will enable the public and stakeholders to locate communications sites on NFS lands and complete an initial feasibility assessment prior to submitting a proposal and application to site facilities on NFS lands.
- USFS published the dataset to the Forest Service Geodata Clearinghouse. The map service/feature class/metadata is available at <https://data.fs.usda.gov/geodata/edw/datasets.php?xmlKeyword=communications+sites>.

3. Policies to expedite renewals of an easement, license, or other authorization to locate communications facility installations on federal lands

- a) Federal property-managing agencies will consider the feasibility of allowing automatic renewals unless changed conditions or circumstances exist
 - BLM proposes a rule change requiring the agency to notify the applicant of renewal decisions within 60 days. Additionally, when a renewal application is filed timely, and the authorization is in compliance with all of the terms and conditions, the authorization would remain valid until the agency has made a decision on the renewal application.
- b) Federal property-managing agencies will consider making long-term time frames for authorizations standard – *e.g.*, 25-30 years.
 - BLM proposes a rule change to establish a standard 30-year authorization term.
 - USFS amended its current rules by adding new paragraph (g)(5)(ii) to establish a standard term for communications use authorizations of 30 years, unless case-specific circumstances warrant a shorter term.¹³

4. Policies prioritizing or streamlining construction permits in previously-disturbed rights-of-way

- a) Federal property-managing agencies adopt and use NEPA categorical exclusions to streamline and expedite environmental reviews when warranted. Categorical exclusions are categories of actions that do not have a significant impact on the environment. The use of categorical exclusions can reduce paperwork and delay that may be associated with the development of more resource-intensive environmental assessments or environmental impact statements.

¹³ See USFS Streamlining Final Rule, 85 Fed. Reg. at 19662-19663, 19666.





- CEQ has developed a comprehensive list of federal agencies' categorical exclusions, available at <https://ceq.doe.gov/nepa-practice/categorical-exclusions.html>.
 - CEQ is working with several federal agencies to develop broadband-related categorical exclusions.
- b) On February 1, 2018, the FirstNet Authority updated its NEPA implementing procedures and revised its list of categorical exclusions and extraordinary circumstances. This will ensure that such procedures align with the FirstNet Authority's statutory mission and activities related to the deployment of the nationwide public safety broadband network and assist FirstNet in complying with NEPA, as well as CEQ and FCC regulations, and incorporate elements of the One Federal Decision policy. As both an independent federal authority within NTIA and a licensee of the FCC, the FirstNet Authority must satisfy its own NEPA obligations as well as comply with FCC-promulgated NEPA procedures. These revisions would facilitate more efficient, effective, and timely NEPA reviews by simplifying and streamlining duplicative requirements consistent with E.O. 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects. FirstNet is currently in the process of revising its implementing procedures given CEQ's NEPA updates.
- c) USFS proposed revisions to its NEPA regulations to increase efficiency in its environmental analysis while meeting NEPA's requirements and fully honoring its environmental stewardship responsibilities.¹⁴
- Revisions would facilitate reliance on a categorical exclusion from documentation in an environmental assessment or environmental impact statement.
 - Revisions would expand the current categorical exclusion for special use authorizations from five to 20 acres and would remove the qualifier "minor" to cover placement of additional communications facilities such as towers and generators.
 - Revisions would establish a new categorical exclusion that does not require a project or case file and decision memo for reissuance of special use authorizations, which would reduce the backlog of expired and expiring authorizations.

¹⁴ See USFS, *NEPA Compliance*, Proposed rule, 84 Fed. Reg. 27544 (June 13, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-06-13/pdf/2019-12195.pdf>.





- d) Existing USFS regulations at 36 CFR § 251.54(g)(4) provide for streamlining evaluation of applications for communications uses on previously disturbed NFS lands.
 - o USFS may evaluate groups of applications for similar uses having minor environmental impacts with one analysis and approve them in one decision.¹⁵

- e) The Department of Transportation’s Federal Highway Administration (FHWA) drafted a proposed rule to facilitate broadband infrastructure deployment in the right-of-way (ROW) of applicable Federal-aid highway projects. The proposed rule will implement provisions of the MOBILE NOW Act (codified at 47 U.S.C. § 1504) to ensure that states meet specific registration, notification, and coordination requirements for such broadband infrastructure ROW efforts. The FHWA published the Notice of Proposed Rulemaking (NPRM) on August 13, 2020. The public comment period closed on September 14, 2020 and FHWA received 30 comments. FHWA is in the process of addressing the comments as it prepares its final rule for release.

¹⁵ See USFS Streamlining Final Rule, 85 Fed. Reg. at 19666.

