# BROADBAND DEPLOYMENT ADVISORY COMMITTEE: STREAMLINING FEDERAL SITING WORKING GROUP

# AMENDED FINAL REPORT, NOV. 9, 2017

## Contents

# SUMMARY OF CHALLENGES AND SOLUTIONS

1. *Challenge*: Varying and unpredictable fees and rates.
   *Solution*: Standardize and publish fee schedules and utilize revenue in a way that promotes expediting federal siting processes.

2. *Challenge*: Lengthy application review times.
   *Solution*: Require all federal landholding or managing agencies to prioritize broadband permitting. Implement a 60-day shot clock for application review with a deemed approved remedy and a 10-day shot clock for notification of additional materials request.

3. *Challenge*: Unharmonized application forms and unpredictable processes across agencies.
   *Solution*: Require all federal landholding or managing agencies to use one standardized application form. Harmonize permitting processes across agencies to extent feasible and ensure the process is uniformly applied across regional and state offices. Recognize and accept existing completed studies in previously disturbed areas.

4. *Challenge*: Cumbersome historic and environmental review processes including environmental studies and Geographic Information System studies.
   *Solution*: Harmonize environmental assessments across federal landholding or managing agencies, further streamline National Environmental Protection Act and National Historic Preservation Act exclusions, and eliminate duplicative environmental studies. Make current environmental and historic review streamlining mechanisms mandatory for all agencies.

5. *Challenge*: Lease and renewal terms that do not incentivize investment.
   *Solution*: All leases and easements should have 30 or more-year terms with expectancy of renewal to better incentivize investment.

6. *Challenge*: Unclear points of contact for local, state, and federal leads for agencies.
   *Solution*: Every project should have a single, clear point of contact for application review and follow-up.

7. *Challenge*: Difficulty getting updates on status of applications and lack of transparency in agency-deployment application process history.
   *Solution*: There should be a single, easily accessible online-tracking mechanism at each federal agency for the permitting process. All agencies should regularly report on permit status, the number of permitting applications they have processed, and on coverage gaps.

8. *Challenge*: Lack of re-evaluation of processes and fees as technologies evolve.

*Solution*: The common application form should accommodate changes to existing installations and applicable leases and easements. Agencies should accommodate and incorporate new broadband infrastructure technologies into their review processes.

9. *Challenge*: Department of Defense Siting Process is costly and time-consuming.
   *Solution*: permitting Consistent with all necessary measures to protect national security, Department of Defense (DoD) agencies should incorporate streamlining efforts utilized and recommended for other federal agencies and examine their military base broadband deployment permitting practices on DoD real estate. DoD agencies should streamline their spectrum clearance processes.

10. *Challenge*: Siting barriers caused by federal funding clauses.
    *Solution*: Deploying broadband is not within the meaning of prohibiting commercial use of land developments funded by federal grants.

# INTRODUCTION

The Federal Communications Commission (FCC or Commission) Broadband Deployment Advisory Committee, Streamlining Federal Siting Working Group (Working Group) applauds the Commission's interests in removing regulatory barriers to broadband deployment on federal lands and property, which amounts to nearly 30 percent of the U.S. landmass. As Chairman Pai correctly noted, "[broadband is] becoming the 21st-century gateway to jobs, health care, education, information, and economic development everywhere, from the smallest town to the largest city."[1] Developing recommendations to improve the process of siting on federal lands and federally managed properties, as this Working Group has been tasked,[2] will incentivize investment in the deployment of next-generation broadband that will enhance public safety and enable smart solutions in communities across the country.

The Working Group recommends that the FCC evaluate the solutions herein presented to determine which government entity(ies) should effectuate and implement the proposed action. The Working Group encourages the FCC to continue in its advisory capacity to the Broadband Interagency Working Group (formerly the Broadband Opportunity Council) to provide broadband infrastructure policy expertise and ensure that the recommendations herein contained are implemented effectively.

Through its deliberations, the Working Group found that the fundamental concerns regarding the streamlining of federal siting are 1.) predictability and complexity of the application process and accompanying requirements and 2.) the application review time.

[1] *Chairman Pai Forms Broadband Deployment Advisory Committee*, FCC News Release (Jan. 31, 2017), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-343242A1.pdf.

[2] By the direction of FCC staff, the Streamlining Federal Siting Working Group was instructed not to include Tribal lands in the Working Group's deliberations and recommendations.

# RECOMMENDED SOLUTIONS TO ADDRESS FEDERAL SITING CHALLENGES

## *1. Varying and unpredictable fees and rates*

The Working Group recommends that all administrative fees associated with federal siting applications should be set at a national level. Additionally, all federal agencies should publish a public fee schedule outlining the costs associated with granting property interests to providers to deploy broadband communications facilities on federal lands. Such guidance would give broadband providers greater predictability and knowledge of the cost of a potential build. Further, the publication of an agency fee schedule would remove months of time spent by both sides negotiating what could otherwise be a standard rate that incorporates an escalation clause accounting for inflation.

Security deposit requirements also vary and are unpredictable. Working Group members agree that requirements for a security deposit are misplaced prior to the lease or easement negotiation stage. While an application fee is reasonably required with the proposed form, it would be highly unusual and burdensome to require a security deposit prior to negotiation and execution of a lease or easement. As a practice, security deposits are generally collected from credit poor, unknown tenants, in contrast to the broadband providers who have decades of experience across the country with federal civilian and military sites. Therefore, there should be no need for security deposits. Artificially increasing the cost of deploying broadband infrastructure is contrary to the national policy of accelerating broadband availability. However, should a deposit be required, deposits should be refunded if an agreement is not executed due to no fault of applicant.

Additionally, the Working Group recommends that federal agencies utilize predictable measurers for rent increases such as annual Consumer Price Index or fixed percent increases. Fair market appraisal updates should be conducted every ten years instead of every five years. Also, an agency should not require a provider to share with the agency the revenue it obtains from subsequent collocators. Where a military installation is the sole or primary beneficiary of the infrastructure, agencies should allow for rent elimination or in-kind rent reduction.

Because many federal agencies express that staff constraints are a cause of delay in reviewing siting applications, the Working Group recommends that all federal agencies should receive more of the revenue they generate from broadband deployment. Agencies can use the revenue retained to hire more staff to focus on their communications site programs to improve response times and enable other efficiencies. Similarly, there should be reasonable revenue share for broadband infrastructure siting between agency headquarters and field offices. Field offices gaining revenue from the applications they process may provide incentives to streamline the application process and review more applications.

The Working Group discovered that not all equipment deployed on federal lands and property receive the same review scrutiny as broadband infrastructure. Agencies should ensure that broadband service is treated similarly to utilities deployed on federal lands, which typically receive faster approvals at lower costs.

## *2. Lengthy application review times*

In keeping with the national goal of ensuring that "all people of the United State have access to broadband capability"[3] and whereas there is national agreement to eliminate barriers to broadband infrastructure deployment,[4] Congress should mandate that all federal agencies prioritize broadband permitting and implement funding and application review changes that reflect the prioritization of broadband deployment.

Infrastructure providers report delays in broadband permitting application processing across federal agencies. For example, InterConnect Towers (ICT), a wireless infrastructure provider that has been providing wireless coverage on federal land since 1998, provided data to the Working Group that ICT alone has 30 serialized Bureau of Land Management applications across California, Nevada, and Arizona that have been pending since 2013.[5]

The Department of Interior (DOI) is working to streamline its infrastructure project review processes as evidenced by the recent release of its Order "Streamlining NEPA and Implementation of Executive Order 13807 Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects," which creates a target for each DOI bureau to "complete each Final [Environmental Impact Statements] for which it is the lead agency within 1 year from the issuance of a Notice of Intent (NOI) to prepare and EIS."[6] However, Working Group members agree that all federal landholding and managing agencies can do more to reduce review times in all of their broadband permitting steps.

Consequently, the Working Group urges the FCC to emphasize that timely responses to broadband siting applications are mandatory. Consistent with GSA Bulletin FMR 2007-B2, agencies should be required to process and respond to each application within a specified time period – no more than 60 days. Additionally, applications should be "deemed approved" upon passage of time. Expanding broadband is a very important national policy objective, and wireline and wireless broadband are dynamic technologies. Accordingly, federal agencies should apply the FCC's deemed approved policy whereby applications that are neither formally approved nor rejected within 180 days of submission for initial installation requests (or 90 days in the case of collocations or modifications) should be deemed approved (subject to relevant agency-specific statutory authority to provide a deemed approved remedy).[7] These timeframes are the

---

[3] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115, 516 (2009).
[4] *Broadband: Deploying America's 21st Century Infrastructure: Hearing Before the Subcomm. on the Communications and Technology of the H. Comm. on Energy and Commerce Committee*, 115th Cong. (Mar. 17, 2017) (Majority Subcomm Staff Memorandum to Members), available at http://docs.house.gov/meetings/IF/IF16/20170321/105740/HHRG-115-IF16-20170321-SD002-U1.pdf.
[5] *See*, Comments of Interconnect Towers LLC, DOI Docket No. 2017-0003-0191, at 2, 13 (filed October 10 2017) (noting "ICT alone, for example, has 30 serialized applications across California, Nevada, and Arizona that have been pending since 2013 (See Attachment A)").
[6] Secretarial Order 3355, *Streamlining NEPA and Implementation of Executive Order 13807 Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, Section 4.a.(2), (Dep't of Interior Aug. 31, 2017), available at https://elips.doi.gov/elips/0/doc/4581/Page1.aspx.
[7] *See* Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), Pub. L. No. 112-96, 126 Stat. 156, 232-33 § 6409(a) (2012) ("Spectrum Act") (codified at 47 U.S.C. § 1455(a)). *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12866-67 ¶ 3 (2014) ("*2014 Wireless Infrastructure Order*"), *aff'd*, *Montgomery County v. F.C.C.*, 811 F.3d 121 (4th Cir. 2015).

same intervals that the FCC established for municipalities in land use approvals in order to expedite broadband infrastructure deployment.[8] Without this safeguard, applications may languish for years at executive agencies, which is contrary to the national policy promoting wireline and wireless broadband throughout all federal properties.

The Working Group recommends that if requested or needed, a walk-out of the property with the requesting provider and responsible personnel of the agency should occur within 30 days of the filing of an application, and the provider may file a revised, more detailed application, reflecting the input and discussion with the responsible agency personnel during the property walk-out. If an application is revised, it should be approved within 60 days of the submission of the revised application. The federal agency should notify the applicant within ten days of receipt of the application if the agency believes the application is not materially complete and it needs to be amended or modified. The agency should identify the specific form for incompleteness. The applicant should submit the revised application within 60 days of being notified of the error. If an application is rejected, the decision should list in writing all factual, policy, and legal grounds for rejection as well as a contact person for escalation. Sites sometimes go into holdover status after completion of a lease term but before renewal. Therefore, the Working Group also recommends that application review priority be given to site permit agreements that are expired or soon to expire.

Additionally, efficiencies would be gained if federal agencies are able to use the applicant's diligence to shorten approval times and reduce costs. For instance, rather than perform all portions of the application review itself, a federal agency could use recent site inspection photos to supplement its own inspection process. The reviewing agency could also use National Environmental Policy Act (NEPA) reviews and other regulatory studies completed recently by the applicant. There should be a formalized process for agencies to utilize past NEPA review materials regardless of which agency conducted the review.

Similarly, the Working Group recommends the development of formalized guidance on scenarios in which a project is likely to involve multiple agencies. The lead agency reviewing the application should highlight and coordinate with the other agencies that should be involved.

To further expedite the application process, agencies should automatically accept document revision requests to correct obvious clerical errors within an application. A common clerical error requiring application correction is an incorrect/incomplete entity name in the preamble, body, and/or signature block of an application. Additionally, document preparers should have flexibility in cases where applicants are reasonably unable to comply with specific provisions. The most common example involves the insurance provisions. Often, the federal insurance requirements are not commercially available, but the agencies are unable to revise the requirements for them in the application. Specifically, the government unrealistically requires "per occurrence" insurance coverage amounts in lieu of adequate coverage in the aggregate.

[8] The FCC is currently reviewing comments about expanding the applicability of "deemed approved" proposals. Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, *Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment*, FCC 17-38 (rel. Apr. 21, 2017) ¶¶ 8-9. Any "deemed approved" remedy adopted by the FCC should be the standard applied by all federal agencies.

The Working Group also recommends that federal agencies presume broadband siting applications to be consistent with each agency's mission and property use. Consistent with Section 704 of the Telecommunications Act, applications to place communications facilities should be approved unless they are determined, on the basis of all relevant evidence, to be in direct and complete conflict with an agency's mission. The existence of other providers' wireline and/or wireless facilities at the application site provides a strong presumption that similar installations are consistent with the agency's mission and use of its property. If the executive agency rejects an application because it is in direct conflict with the agency's mission or use of its property, the executive agency should provide in writing all factual bases proving that the application is in direct and complete conflict with the agency's mission or use of its property. Those factual bases should be provided to the provider in writing, concurrently with the rejection.

Having pre-approved installation types with the ability to make minor pre-approved changes would lessen the burden on the agency for approval and will result in faster installation for the service provider. The Working Group encourages agencies to use Program Comments, Programmatic Environmental Assessments, or other vehicles to identify categories of facilities to apply streamlined approval.[9] Pre-approved installation types could vary based on the type of agency and the nature of the site region or specific location. These pre-approved installation types could be listed on the agencies website or documentation. This would also allow the agency to promote certain types of installations they prefer by making the approval and permitting process for those particular types of installations streamlined.

## *3. Unharmonized application forms and unpredictable processes across agencies*

### *Unharmonized application forms*

The Working Group recommends that there be one required, standardized siting permit application form for agencies to use with elements that apply to specific agencies. Agencies should work with industry to create standard templates to be applied across all agencies and within the different offices within each agency.

In 2015, the General Service Administration released its Wireless Telecommunications Company Application (GSA Common Form Application) to serve as a common application "for use by all land-holding executive agencies, streamlin[ing] the collection of business information that will be used by the Federal Government to negotiate specific antenna installation contracts and to obtain a point of contact for each applicant."[10] Being over two years out from release, agencies and industry should evaluate the effectiveness of the GSA Common Form Application. The Working Group proposes that GSA revise its Common Form Application as follows:

- *GSA should require each agency to provide a contact person for handling applications related to each property.* Under the Section "Potential Antenna Lessee Document Check List,"

[9] *See* Advisory Council on Historic Preservation (ACHP), Program Comment for Communications Projects on Federal Lands and Property (May 8, 2017), available at http://www.achp.gov/docs/broadband-program-comment.pdf (ACHP Program Comment).

[10] General Service Administration, Wireless Telecommunications Company Application (current revision Sep. 2015), available at https://www.gsa.gov/forms-library/wireless-telecommunications-company-application.

the form states that a provider may contact the "Contracting Officer or the Contracting Officer Representative listed on the application..." GSA should clarify that all executive agencies must provide and maintain a current online listing of the name and contact information for a contracting officer or representative for each federal property for industry members to contact with questions related to the application form or wireless installation process.

o *A single online tracking mechanism should be utilized.* GSA should require documentation of an online application tracking mechanism for each agency so that the agenc(ies) and applicant can efficiently track the progress and status of an application request. This will facilitate efficient handling and processing of applications. This mechanism can also help applications stay on track to meet required timelines and serve as a useful tool to communicate about application progress and status. The tracking mechanism will identify the appropriate offices responsible for each broadband siting application, along with point of contact information.

o *RFI certification report requirement should be clarified.* A Radio Frequency Identification (RFI) certification report is listed as a potential document that may be required under the common application Document Check List. This section should be clarified to state that RFI reports are not required outside of military installations. Such reports have not been necessary over decades of industry experience, and there is no need to add an additional report that has not been required previously.

o *The application form should not implicate a JSC review for commercial providers of unlicensed wireless services*. An FCC license is typically not required to operate unlicensed wireless services for operations that meet certain FCC requirements for unlicensed use of spectrum, such as non-interference and power limits. Therefore, unlicensed use that meets this standard should not be subjected to additional spectrum reviews, such as the Joint Spectrum Center (JSC) review. The Defense Information Systems Agency operates JSC as a required process by GSA and the Department of Defense to identify and mitigate electromagnetic interference to base electronics and spectrum-dependent systems before approving a commercial wireless system installation. The actions GSA takes with the common application in proposing a common application form for siting wireless facilities on federal land or buildings should not trigger a JSC review for commercial providers of unlicensed wireless services.

o *"Federal, state and local statutory recording requirements" should be clarified or deleted.* This section should be clarified to either describe exactly what is being required, or it should be omitted. Recording requirements may be a protection or benefit to the applicant. However, to the extent this type of document has not been required previously, it should not impose a new requirement on providers.

o For the reasons discussed in the fees and rates section above, all *requirements for a security deposit should be eliminated at the application stage.*

o *Requirements for a performance bond should be eliminated.* The requirement for a performance bond has not been a common practice in federal wireline or wireless siting, and adding this new requirement at the application stage is both unnecessary and contrary to the policy objective of removing obstacles to accelerated broadband investment and availability. This is especially true when a national wireless provider is the applicant, and there has been no showing that a performance bond is necessary for these providers or any others at the application stage.

- *Certain information requested is too broad.* The requested fields of "Name of Officers, Members, or Owners of Concern, Partnership, etc.," "Federal EIN / State Tax ID," and "D&B Rating," lie outside of normal business purposes. The requested "FCC License" information field would not apply to certain applicants, namely, neutral-host wireless providers. The "Person Authorized to Sign Contracts" information is too detailed; there is no reason to provide detailed contact information for someone who will not be handling the day-to-day issues at the site. Moreover, most companies have multiple potential signing parties, but this form only allows for one. Finally, more feedback on what numbers 1 and 7 are meant to reference on the "Potential Document Check List" would be helpful to applicants.

- *GSA should clarify the title of the proposed common form application.* In its request for public comments, GSA referred to the proposed application as the "Wireless Telecommunications Industry Application"; however, the application form is titled "Wireless Telecommunications Company Application." For clarity and consistency, GSA should clarify the title of the common form application.

- *Application forms should be utilized to initiate amendments to existing installations and the applicable lease, easement or right-of-way.* Given the continually changing technology and rapid growth of broadband, it is common practice that broadband installations will be modified one or more times over the course of the multi-year arrangement, and some site augments may involve an amendment to the controlling legal arrangement, whether a lease, easement, right-of-way or otherwise. Common form applications are a convenient and logical mechanism for triggering, tracking and managing such amendments. Thus, GSA should clarify that all executive agencies shall utilize the GSA application form for new wireless infrastructure requests, and for amendments to existing wireless infrastructure.

### *Unpredictable processes across agencies*

The Working Group urges that broadband infrastructure siting processes should be harmonized across agencies to the extent possible. Also, there should be consistency in how files are processed by the various offices within each agency. Each agency should create a uniform process within each of its regional, state, and field offices.

To ease the burden of the applicant communicating with multiple agencies involved with a site with their varying processes, the Working Group recommends a standardized approach to mapping out which agencies will be involved with a project early on in the application process. There should be a process to ensure that relevant information is shared with the federal agencies involved. Such a system can be executed through the GSA Common Form Application or a similar common application if there is a field on the application to check a box for potentially involved agencies. GSA should mandate standard template contract(s) that apply across all federal agencies. These contracts should be executable in 30-60 days.

Additionally, the Working Group suggests that agencies measure the number of contracts they sign for new sites and new carriers on existing sites. Tracking executed contracts will help measure whether broadband deployment is in fact increasing on federal lands and property. There should be incentives for agencies approving applications. One such incentive could be that agencies receive partial fee retention through, for example retaining initial rents.

All federal agencies with land management authority should update and harmonize their rights-of-way rules. For example, Department of Interior agencies should update its rights-of-way rules to align to the Bureau of Indian Affairs updated rights-of-way rules with respect to application timelines, effective in 2016. Each agency should conduct a thorough evaluation of their siting rules and processes and streamline them to reduce burdens and encourage investment in broadband deployment. Certain federal land management agencies follow regulations that require infrastructure providers to hold FCC licenses or utilize agreements with the same requirement. These provisions are holdovers from when licensed carriers constructed their own infrastructure.

Policy changes such as allowing applicants to opt in to the rates, terms, and conditions of other providers located at the federal property would encourage investment. Once a federal property is opened for any telecommunications provider, then the property should be open to any and all other providers, without delay, on a non-discriminatory basis to the extent feasible by engineering standards. For example, if one provider's equipment is located on a water tank, then a subsequent provider should be permitted to collocate, as engineering permits, on that same water tank in a substantially similar, but not necessarily identical fashion, opting into the rates, terms and conditions of the initial provider's lease or easement or other legal arrangement. This procedure is consistent with, and may be required by, the anti-discrimination requirement in Section 704(c) of the Telecommunications Act.

Additionally, access to federal lands sites for wireless infrastructure development should be available to tower owners, operators, managers, and other authorized personnel, where applicable. Obvious exceptions for security reasons aside, infrastructure providers need to be able to access the sites quickly, especially in the case of emergencies. Federal agencies should be directed to recognize tower operator sublease and management interests. Some agencies do not consider that tower operators lease or manage a significant number of towers that are still owned by the carriers.

## *4. Cumbersome historic and environmental review processes*

The Working Group recommends that environmental assessments be harmonized across agencies to reduce confusion and redundancy. Environmental impact studies should be valid for a reasonable amount of time so they do not have to be redone. Where surveys or other studies are completed as part of the environmental review, those findings should be available to federal agencies and applicants to use during the reasonable time period.

All federal agencies should ease permitting requirements in previously disturbed areas that have previously undergone environmental review. All federal agencies should streamline their National Historic Preservation Act (NHPA) historic preservation review process by finalizing a list of broadband activities exempted from Section 106 consultation. The Working Group recommends that the FCC expand E106 & FCC Tower Construction Notification System program. All federal agencies should also finalize NEPA categorical exclusions that will exempt broadband projects from Environmental Assessments for sites that involve, for example, cell site compounds, aerial cable, and previously disturbed grounds.

The Advisory Council on Historic Preservation (ACHP) should clarify applicability of its new *Program Comment for Communications Projects on Federal Lands and Property*[11] to all federal agencies, revising the introduction, "Federal LMAs/PMAs may elect to follow this Program Comment in lieu of the procedures in 36 CFR §§800.3 through 800.7 for individual undertakings falling within its scope." To avoid confusion, "may elect" should be struck and ACHP should affirmatively require the use of the Program Comment by all federal agencies. The Working Group recommends the following additional changes to the Program Comment:

1. The Program Comment should be revised to apply to all Federal Land Managing Agencies (LMAs) and Federal Property Managing Agencies (PMAs). As currently drafted, elective utilization of the Program Comment process does not ensure the expedited and efficient siting procedures necessary to better serve the exponentially growing data demands on networks and the underlying infrastructure.
2. Agencies should be required to process and respond to each application within a specified time period—no more than 60 days.
3. If requested or needed, a walk-out of the property with the requesting provider and responsible personnel of the agency should occur within 30 days of the filing of an application, and the provider may file a revised, more detailed application, reflecting the input and discussion with the responsible agency personnel during the property walk-out. If an application is revised, it should be approved within 60 days of the submission of the revised application. The agency should notify the applicant within 10 days of receipt if the agency believes the application is not materially complete and needs to be amended or modified. If an application is rejected, the decision should list in writing all factual, policy, and legal grounds for rejection as well as a contact person for escalation. Applicants should have a right to cure their application by making corrections based on written grounds for rejection received.
4. Throughout the application process, Federal LMAs and PMAs should be required to provide application status updates at the request of applicants. Greater transparency during and after the application process has completed will improve the application submission process and will provide documentation for applicants to use with other historic preservation review processes such as the FCC's NEPA review process
5. Applications that are neither formally approved nor rejected within 180 days of submission for initial installation requests (or 90 days in the case of collocations or modifications) should be deemed approved. These timeframes are similar timeframes to what the FCC established for municipalities in land use approvals to expedite broadband infrastructure deployment. Without this safeguard, applications may languish for years with no action taken by the federal agency, which is contrary to the national policy promoting broadband throughout all federal properties.

Lastly, the Working Group recommends a thorough evaluation of the August 15, 2017 Executive Order 13807 *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*. The Order incorporates "broadband internet" projects in its efforts to "ensure that the Federal environmental review and permitting process for infrastructure projects is coordinated,

[11] ACHP Program Comment.

predictable, and transparent." Agencies should be held accountable to implement the order's directives within a specified time period.[12]

## *5. Lease and renewal terms that do not incentivize investment*

The Working Group recommends that executive agencies utilize easements or leases with 30 or more-year terms with expectancy of renewal for wireline or wireless siting requests. The Telecommunications Act and 10 U.S.C. §§ 2667 & 2668 contemplate that executive agencies may permit telecommunications facilities installations on federal property through the use of easements or leases. Executive agencies should be notified that leases are not required for wireline or wireless installations, but that easements are an acceptable legal transaction for the placement of wireline and wireless facilities on federal property. Agencies should also be notified that to minimize the cost— on both the agency and the provider—of future siting applications, and given the extensive capital investment of long-lived assets required for the installation of wireline and wireless infrastructure, it is in the public interest for applications to lead to leases or easements with terms at least 30 years long and with renewal expectancy.

Ideally, lease terms should extend to the useful life of the assets. The Working Group urges the standardization of lease terms within each type of technology. To avoid holdover leases, agencies should begin the lease renewal process five years in advance of expiration of the lease. Site agreements often expire without a clear path to renewal. Agency rights to terminate leases should be limited to reasons of national security.

## 6. *Unclear points of contact for local, state, and federal leads for agencies*

The Working Group recommends that GSA, or other designated agency, should require each agency to provide a contact person for handling applications related to each property. Under GSA's Common Form Application Section "Potential Antenna Lessee Document Check List," the form states that a provider may contact the "Contracting Officer or the Contracting Officer Representative listed on the application..." GSA should clarify that all executive agencies must provide and maintain a current online listing of the name and contact information for a contracting officer or representative for each federal property for industry members to contact with questions related to the application form or wireless installation process. This process should also apply to wireline broadband installations.

Each federal agency should designate a state contact that covers each state to ensure consistency across field offices, forests, and national parks. Additionally, each federal agency should have a specific page on its website for all "dedicated points of contact," along with each agency's "time to permit" information.

[12] Secretarial Order 3355, *Streamlining NEPA and Implementation of Executive Order 13807 Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects* (Dep't of Interior Aug. 31, 2017) (DOI began its Executive Order implementation), available at https://elips.doi.gov/elips/0/doc/4581/Page1.aspx.

One government entity, such as NTIA, should consistently compile this information on one online portal.[13]

The Working Group encourages each federal agency to implement an escalation or appeal process when broadband facility requests are delayed or denied. Furthermore, each agency should have an ombudsman to resolve permitting problems. Formalizing this process will ensure more consistent treatment of applications.

## *7. Difficulty getting updates on status of applications and lack of transparency in agency-deployment application process history*

As discussed above, agencies should employ a a single online permitting application tracking mechanism. GSA, or other designated federal agency, should require each executive agency to create a single online application tracking mechanism so that the agenc(ies) and applicants can efficiently track the progress and status of an application request. This will facilitate efficient handling and processing of applications. This mechanism can also help applications stay on track to meet required timelines and serve as a useful tool to communicate about application progress and status. The tracking mechanism will identify the appropriate agency responsible, along with contact information, for a specific application. The Working Group encourages the FCC and other federal agencies to review the Administration's Federal Infrastructure Permitting Dashboard,[14] which includes infrastructure projects identified as Covered Projects under Title 41 of the Fixing America's Surface Transportation (FAST) Act, Department of Transportation projects, and other tracked projects. This dashboard is not currently used to track broadband infrastructure projects across federal agencies; however, agencies may find it efficient to track their projects in this manner.

All agencies should provide the applicant with information regarding the standard processing time for permitting at the agency (within the established shot clock) so that providers can schedule construction projects in a timely manner.

The Working Group also urges the FCC or Congress to set executive-level quantifiable goals for broadband deployments such as collecting aggregate, industry-level commitment counts to deploy broadband sites on federal lands, and agencies should publish performance against the goals. Each agency should have an identified direct-reporting lead responsible for implementation by achieving actual deployments. Federal agencies should focus on deployment results, beyond intermediary process changes. Each agency should also create deployment transparency mechanism such as a monthly web post of the number of contracts signed, new deployments, and new carriers deployed on existing sites. Every quarter, federal agencies should transparently report the number of permitting applications they have processed.

---

[13] *See* National Telecommunications Information Administration (NTIA), Broadband Interagency Working Group, Broadband Opportunity Council Agencies' Progress Report (Dep't of Commerce Jan. 2017) (NTIA's BroadbandUSA website will house a one-stop portal), available at https://www.ntia.doc.gov/files/ntia/publications/broadband_opportunity_council_agencies_progress_report_jan2017.pdf.

[14] *See* Federal Infrastructure Permitting Dashboard, available at https://www.permits.performance.gov/projects.

All federal Agencies should provide a regular report to identify coverage gaps and deficiencies with respect to the current status of broadband deployment on federal lands. Regular publication of information about areas designated by agencies as "telecom areas" would also be helpful. Agencies can call for public input in identifying these areas. Such reporting will enable agencies to better access broadband deployment and set quantifiable goals for broadband deployment on federal lands. Information sharing can also reveal the challenges to providing service on federal lands at an economically feasible cost and afford a platform to discuss solutions to these challenge

## *8. Lack of re-evaluation of processes and fees as technologies evolve*

The Working Group recommends that application forms be utilized to initiate amendments to existing installations and the applicable lease, easement or right-of-way. Given the continually changing technology and rapid growth of broadband, it is common practice that broadband installations will be modified one or more times over the course of the multi-year arrangement, and some site augments may involve an amendment to the controlling legal arrangement, whether a lease, easement, right of way or otherwise. Common form applications are a convenient and logical mechanism for triggering, tracking and managing such amendments. Thus, GSA should clarify that all executive agencies shall utilize the GSA Common Form Application for new broadband infrastructure requests, and for amendments to existing broadband infrastructure.

The Working Group also urges federal agencies to incorporate small cells, distributed antenna systems (DAS), and indoor coverage into their streamlining processes. There is often a lag between the introduction or increased use of a technology and when federal agencies adopt procedures to process the siting requests. Federal agencies should create a system for how to evaluate new technologies and determine how they should be reviewed for permitting.

## *9. DoD siting process costly and time-consuming*

The Working Group found that siting broadband facilities on Department of Defense (DoD) property presents unique challenges. Consistent with all necessary measures to protect national security, DoD agencies should streamline deployment as indicated in the above recommendations but in keeping with national security interests.

The DoD should reexamine rules and policies regarding the permitting and deployment of broadband within bases and on all DoD real estate, 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 Department of the Navy (DoN) is a good example of a DoD agency that completed a thorough example of its permitting processes and executed a path towards streamlining broadband deployment on its property. Industry successfully collaborated with the DoN for two years on the development and

release of its memorandum titled "Streamlined Process for Commercial Broadband Deployment," (Navy Memo) which was signed by the Deputy Under Secretary of the Navy (DUSN) for Management on June 30, 2016.[15] The new guidelines "set a goal for DON installation to meet or exceed national averages for broadband coverage and capacity," according to the official memorandum. According to the Wireless Infrastructure Association, which coordinated industry participation, "the new wireless facility siting procedures cut down a project coordination and siting deployment process that could take up to five or more years to complete to less than one year."[16]

The DoN is now evaluating an update to its memo to incorporate small cells, DAS, and indoor deployments into its streamlining processes. Other DoD agencies should evaluate the effectiveness of the Navy Memo process and implementation as they develop their own broadband infrastructure siting review process.

The Working Group urges DoD agencies to employ shorter and parallel process steps, particularly making JSC review concurrent with the RFP process. Agencies should accelerate the JSC pre-work, application-to-bid mechanism to less than 30 days. Agencies should also streamline the RFP process by moving it online, reducing processing to 30 days, and allowing multiple carriers "to win" per each RFP.

Military agencies should also streamline their RF spectrum clearance processes by eliminating duplicate spectrum interference reviews where one has already been completed for a similar instillation. RF clearance should be valid for an extended period of time. Additionally, agencies should incorporate all possible spectrum bands for operation into the initial RF study so that providers do not have to repeatedly conduct studies for new deployments or new carriers being added to the neutral host.

## *10. Siting barriers caused by federal funding clauses*

The Working Group found that some states impose restrictions on broadband infrastructure deployment in local parks developed with federal funds. For example, Virginia has a restriction that:

> property acquired or developed with LWCF [Land & Water Conservation Fund Act of 1965] assistance shall be retained and used for public outdoor recreation in perpetuity. Any property so acquired and/or developed shall not be wholly or partly converted to other than public outdoor recreation uses without the approval of NPS pursuant to Section 6(f)(3) of the LWCF Act.[17]

Site reviewers in Virginia are interpreting this law as prohibiting wireless infrastructure deployment, labeling such deployment as a prohibited commercial endeavor. It is not likely that the provision of broadband services is the type of activity the Land and Water Conservation Fund Act of 1965 was trying

[15] Dep't of the Navy, Deputy Under Secretary of the Navy Memo, *Streamlined Process for Commercial Broadband Deployment* (Jun. 30, 2016), available at http://www.doncio.navy.mil/ContentView.aspx?ID=8008.
[16] Wireless Infrastructure Association, *Wireless Industry Applauds U.S. Navy's Push to Streamline Wireless Siting Process on Federal Bases* (Jul. 8, 2016), available at https://wia.org/wireless-industry-applauds-u-s-navys-push-streamline-wireless-siting-process-federal-bases/.
[17] State of Virginia, Conversion of Use General Information, available at http://www.dcr.virginia.gov/recreational-planning/document/lwcf-conversion.pdf.

to protect against. Therefore, the Working Group recommends that land-grant clauses precluding commercial activity from taking place on the land provided for by grant should not be interpreted to preclude broadband infrastructure deployment and provision of broadband services. All agencies, states, and localities should be advised that deploying broadband is not within the meaning of prohibiting commercial use of land developments funded by federal grants.