115TH CONGRESS
2D Session

H. R. 4824

To allow certain State permitting authority to encourage expansion of broadband service to rural communities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 18, 2018

Mr. CURTIS (for himself, Mr. GOSAR, Mr. LAMALFA, Mr. TIPTON, Mr. GIANFORTE, Mr. PEARCE, Mr. BUCK, Mrs. NOEM, and Mr. STEWART) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To allow certain State permitting authority to encourage expansion of broadband service to rural communities, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Rural Broadband Per-
5 mitting Efficiency Act of 2018”.
SEC. 2. FINDINGS.

Congress finds that, as of the date of enactment of this Act—

(1) the United States has been the world leader in Internet and telecommunications technology growth, and the people of the United States now rely on broadband connectivity as an increasingly necessary part of daily life;

(2) broadband services are used by private citizens, businesses, public groups, and government agencies throughout the United States to communicate, access information, share cultures, develop technologies, and grow economies nationally and internationally;

(3) while wireless and broadband technologies have contributed significantly to progress throughout the United States, lack of broadband deployment to rural communities has put rural parties at a greater disadvantage for economic development; and

(4) delays in the permitting process are costly and discouraging to broadband deployment and further discourage broadband deployment to rural areas.

SEC. 3. DEFINITIONS.

In this Act:
(1) Broadband Project.—The term “broadband project” means a project under which a broadband provider installs wireless infrastructure or broadband infrastructure, including copper lines or fiber optic lines, on Federal land.

(2) Broadband Provider.—The term “broadband provider” means a facilities-based provider of broadband capability that enables a user to originate and receive high-quality voice, data, graphics, and video telecommunications.

(3) Operational Right-of-Way.—The term “operational right-of-way” means all real property interests (including easements) acquired for the construction or operation of a project, including the locations of the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, copper and fiber optic lines, utility shelters, and broadband infrastructure as installed by broadband providers, and any rest areas with direct access to a controlled access highway or the National Highway System.

(4) Project.—The term “project” has the meaning given the term in section 101(a) of title 23, United States Code.
(5) SECRETARY CONCERNED.—The term “Secretary concerned” means—

(A) the Secretary of Agriculture (acting through the Chief of the Forest Service), with respect to National Forest System land; and

(B) the Secretary of the Interior, with respect to land managed by the Bureau of Land Management (including land held for the benefit of an Indian tribe).

SEC. 4. STATE PERMITTING AUTHORITY.

(a) IN GENERAL.—The Secretaries concerned shall jointly establish a program under which any State may offer, and the Secretary concerned may agree, to enter into a memorandum of understanding with the Secretary concerned to allow for the permitting of broadband within an operational right-of-way in accordance with this section.

(b) ASSUMPTION OF RESPONSIBILITIES.—

(1) IN GENERAL.—In entering into a memorandum of understanding under this section, the Secretary concerned may assign to the State, and the State may agree to assume, all or part of the responsibilities of the Secretary concerned for environmental review, consultation, or other action required under any Federal environmental law pertaining to
the review or approval of a specific operational right-of-way broadband project.

(2) State responsibility.—

(A) In general.—A State that assumes any responsibility under paragraph (1) shall be subject to the same procedural and substantive requirements as would apply if the responsibility were carried out by the Secretary concerned.

(B) Effect of assumption of responsibility.—A State that assumes any responsibility under paragraph (1) shall be solely responsible and solely liable for carrying out, in lieu of the Secretary concerned, the responsibilities assumed under that paragraph until the date on which the program is terminated under subsection (f).

(C) Environmental review.—A State that assumes any responsibility under paragraph (1) shall comply with the environmental review procedures under part 771 of title 23, Code of Federal Regulations (or successor regulations).

(3) Federal responsibility.—Any responsibility of the Secretary concerned described in para-
graph (1) that is not explicitly assumed by the State
in the memorandum of understanding shall remain
the responsibility of the Secretary concerned.

(e) Offer and Notification.—A State that in-
tends to offer to enter into a memorandum of under-
standing under this section shall provide to the Secretary
concerned notice of the intent of the State not later than
90 days before the date on which the State submits a for-
mal written offer to the Secretary concerned.

(d) Memorandum of Understanding.—A memo-
randum of understanding entered into under this section
shall—

(1) be executed by the Governor or the top-
ranking transportation official in the State who is
charged with responsibility for highway construction;
(2) be for a term not to exceed 10 years;
(3) be in such form as the Secretary concerned
may prescribe; and
(4) provide that the State—

(A) agrees to assume all or part of the re-
sponsibilities of the Secretary concerned de-
scribed in subsection (b)(1);
(B) expressly consents, on behalf of the
State, to accept the jurisdiction of the Federal
courts for the compliance, discharge, and en-
enforcement of any responsibility of the Secretary concerned assumed by the State;

(C) certifies that State laws (including regulations) are in effect that—

(i) authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

(ii) are comparable to section 552 of title 5, United States Code, including providing that any decision regarding the public availability of a document under the State laws is reviewable by a court of competent jurisdiction;

(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed; and

(E) agrees to provide to the Secretary concerned any information the Secretary considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to and assumed by the State.

(c) LIMITATION.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary concerned under any Federal law.

(f) TERMINATION.—
(1) **Termination by the Secretary.**—The Secretary concerned may terminate the participation of any State in the program established under this section if—

   (A) the Secretary concerned determines that the State is not adequately carrying out the responsibilities assigned to and assumed by the State;

   (B) the Secretary concerned provides to the State—

      (i) notification of the determination of noncompliance; and

      (ii) a period of at least 30 days during which to take such corrective action as the Secretary concerned determines is necessary to comply with the applicable agreement; and

   (C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by the Secretary concerned.

(2) **Termination by the State.**—A State may terminate the participation of the State in the program established under this section at any time by providing to the Secretary concerned a notice of
intent to terminate by not later than the date that is 90 days before the date of termination.

SECTION 5. CATEGORICAL EXCLUSION FOR PROJECTS WITHIN OPERATIONAL RIGHTS-OF-WAY.

The Secretary concerned shall—

(1) not later than 180 days after the date of enactment of this Act, designate any project within an existing operational right-of-way as an action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations, and section 771.117(c) of title 23, Code of Federal Regulations (or successor regulations); and

(2) not later than 150 days after the date of enactment of this Act, promulgate regulations to carry out paragraph (1).

SECTION 6. FEDERAL BROADBAND PERMIT COORDINATION.

(a) DEFINITION OF SECRETARY.—In this section, the term “Secretary” means the Secretary of the Interior.

(b) ESTABLISHMENT.—The Secretary shall establish a Federal Permit Streamlining Project in each Bureau of Land Management field office with responsibility for issuing permits for broadband projects.

(c) MEMORANDUM OF UNDERSTANDING.—
(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the National Conference of State Historic Preservation Officers, shall enter into a memorandum of understanding to carry out this section with—

(A) the Secretary of Agriculture;

(B) the Administrator of the Environmental Protection Agency;

(C) the Administrator of the Federal Highway Administration; and

(D) the Director of the United States Fish and Wildlife Service.

(2) LEAD AGENCY.—As part of the memorandum of understanding under paragraph (1), the Secretary shall act as the lead agency in issuing a single permit for each broadband project on behalf of all Federal agencies involved in the broadband project.

(3) STATE PARTICIPATION.—The Secretary may request that the Governor of any State with one or more broadband projects be a party to the memorandum of understanding under paragraph (1).

(4) DESIGNATION OF QUALIFIED STAFF.—
(A) IN GENERAL.—Not later than 30 days after the date of entrance into the memorandum of understanding under paragraph (1), the head of each Federal agency that is a party to the memorandum of understanding (other than the Secretary) shall, if the head of the Federal agency determines it to be appropriate, designate to each Bureau of Land Management field office an employee of that Federal agency with expertise in regulatory issues relating to that Federal agency, including, as applicable, particular expertise in—

(i) planning under the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.);

(ii) the preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(iii) programs under chapter 1 and chapter 2 of title 23, United States Code; or

(B) DUTIES.—Each employee designated under subparagraph (A) shall—

(i) not later than 90 days after the date of designation, report to the manager of the Bureau of Land Management field office to which the employee is assigned;

(ii) be responsible for any issue relating to any broadband project within the jurisdiction of the field office described in clause (i) under the authority of the Federal agency from which the employee is assigned;

(iii) participate as part of the team of personnel working on one or more proposed broadband projects, including planning and environmental analyses; and

(iv) serve as the designated point of contact with any applicable State that assumes any responsibility under section 4(b)(1) relating to any issue described in clause (ii).

(d) FUNDING.—This section shall be carried out using such amounts as are necessary from other amounts available that are not otherwise obligated.