

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4824

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 2018

Received

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## AN ACT

To allow certain State and tribal permitting authority to encourage expansion of broadband service to rural and tribal 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Rural Broadband Per-  
3 mitting Efficiency Act of 2018”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **BROADBAND PROJECT.**—The term  
7 “broadband project” means an installation by a  
8 broadband provider of wireless or broadband infra-  
9 structure, including but not limited to, copper lines,  
10 fiber optic lines, communications towers, buildings,  
11 or other improvements on Federal land.

12 (2) **BROADBAND PROVIDER.**—The term  
13 “broadband provider” means a provider of wireless  
14 or broadband infrastructure that enables a user to  
15 originate and receive high-quality voice, data, graph-  
16 ics, and video telecommunications.

17 (3) **INDIAN LANDS.**—The term “Indian Lands”  
18 means—

19 (A) any land owned by an Indian Tribe, lo-  
20 cated within the boundaries of an Indian res-  
21 ervation, pueblo, or rancheria; or

22 (B) any land located within the boundaries  
23 of an Indian reservation, pueblo, or rancheria,  
24 the title to which is held—

1 (i) in trust by the United States for  
2 the benefit of an Indian Tribe or an indi-  
3 vidual Indian;

4 (ii) by an Indian Tribe or an indi-  
5 vidual Indian, subject to restriction against  
6 alienation under laws of the United States;

7 or

8 (iii) by a dependent Indian commu-  
9 nity.

10 (4) INDIAN TRIBE.—The term “Indian Tribe”  
11 means a federally recognized Indian Tribe.

12 (5) OPERATIONAL RIGHT-OF-WAY.—The term  
13 “operational right-of-way” means all real property  
14 interests (including easements) acquired for the con-  
15 struction or operation of a project, including the lo-  
16 cations of the roadway, bridges, interchanges, cul-  
17 verts, drainage, clear zone, traffic control signage,  
18 landscaping, copper and fiber optic lines, utility shel-  
19 ters, and broadband infrastructure as installed by  
20 broadband providers, and any rest areas with direct  
21 access to a controlled access highway or the National  
22 Highway System.

23 (6) SECRETARY CONCERNED.—The term “Sec-  
24 retary concerned” means—

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

4 (B) the Secretary of the Interior, with re-  
5 spect to land managed by the Department of  
6 the Interior (including land held in trust for an  
7 Indian Tribe).

8 **SEC. 3. STATE OR TRIBAL PERMITTING AUTHORITY.**

9 (a) IN GENERAL.—The Secretary concerned shall es-  
10 tablish (or in the case where both Department of the Inte-  
11 rior and National Forest System land would be affected,  
12 shall jointly establish) a voluntary program under which  
13 any State or Indian Tribe may offer, and the Secretary  
14 concerned may agree, to enter into a memorandum of un-  
15 derstanding to allow for the State or Indian Tribe to pre-  
16 pare environmental analyses required under the National  
17 Environmental Policy Act of 1969 (42 U.S.C. 4321 et  
18 seq.) for the permitting of broadband projects within an  
19 operational right-of-way on National Forest System land,  
20 land managed by the Department of the Interior, and In-  
21 dian Lands. Under such a memorandum of understanding,  
22 an Indian Tribe or State may volunteer to cooperate with  
23 the signatories to the memorandum in the preparation of  
24 the analyses required under the National Environmental  
25 Policy Act of 1969.

1 (b) ASSUMPTION OF RESPONSIBILITIES.—

2 (1) IN GENERAL.—In entering into a memo-  
3 randum of understanding under this section, the  
4 Secretary concerned may assign to the State or In-  
5 dian Tribe, and the State or Indian Tribe may agree  
6 to assume, all or part of the responsibilities of the  
7 Secretary concerned for environmental analyses  
8 under the National Environmental Policy Act of  
9 1969 (42 U.S.C. 4321 et seq.).

10 (2) STATE OR INDIAN TRIBE RESPONSI-  
11 BILITY.—

12 (A) IN GENERAL.—A State or Indian  
13 Tribe that assumes any responsibility under  
14 paragraph (1) shall be subject to the same pro-  
15 cedural and substantive requirements as would  
16 apply if the responsibility were carried out by  
17 the Secretary concerned.

18 (B) EFFECT OF ASSUMPTION OF RESPON-  
19 SIBILITY.—A State or Indian Tribe that as-  
20 sumes any responsibility, including financial re-  
21 sponsibility, under paragraph (1) shall be solely  
22 responsible and solely liable for carrying out, in  
23 lieu of the Secretary concerned, the responsibil-  
24 ities assumed under that paragraph until the

1 date on which the program is terminated under  
2 subsection (g).

3 (C) ENVIRONMENTAL REVIEW.—A State  
4 or Indian Tribe that assumes any responsibility  
5 under paragraph (1) shall comply with the envi-  
6 ronmental review procedures under parts 1500–  
7 1508 of title 40, Code of Federal Regulations  
8 (or successor regulations), and the regulations  
9 of the Secretary concerned.

10 (3) FEDERAL RESPONSIBILITY.—Any responsi-  
11 bility of the Secretary concerned described in para-  
12 graph (1) that is not explicitly assumed by the State  
13 or Indian Tribe in the memorandum of under-  
14 standing shall remain the responsibility of the Sec-  
15 retary concerned.

16 (c) OFFER AND NOTIFICATION.—A State or Indian  
17 Tribe that intends to offer to enter into a memorandum  
18 of understanding under this section shall provide to the  
19 Secretary concerned notice of the intent of the State or  
20 Indian Tribe not later than 90 days before the date on  
21 which the State or Indian Tribe submits a formal written  
22 offer to the Secretary concerned.

23 (d) TRIBAL CONSULTATION.—Within 90 days of en-  
24 tering into any memorandum of understanding with a

1 State, the Secretary concerned shall initiate consultation  
2 with relevant Indian Tribes.

3 (e) MEMORANDUM OF UNDERSTANDING.—A memo-  
4 randum of understanding entered into under this section  
5 shall—

6 (1) be executed by the Governor or the Gov-  
7 ernor’s designee, or in the case of an Indian Tribe,  
8 by an officer designated by the governing body of  
9 the Indian Tribe;

10 (2) be for a term not to exceed 10 years;

11 (3) be in such form as the Secretary concerned  
12 may prescribe;

13 (4) provide that the State or Indian Tribe—

14 (A) agrees to assume all or part of the re-  
15 sponsibilities of the Secretary concerned de-  
16 scribed in subsection (b)(1);

17 (B) expressly consents, including through  
18 the adoption of express waivers of sovereign im-  
19 munity, on behalf of the State or Indian Tribe,  
20 to accept the jurisdiction of the Federal courts  
21 for the compliance, discharge, and enforcement  
22 of any responsibility of the Secretary concerned  
23 assumed by the State or Indian Tribe;

24 (C) certify that State laws and regulations,  
25 with respect to States, or Tribal laws and regu-

1           lations, with respect to Indian Tribes, are in ef-  
2           fect that—

3                   (i) authorize the State or Indian Tribe  
4                   to take the actions necessary to carry out  
5                   the responsibilities being assumed; and

6                   (ii) are comparable to section 552 of  
7                   title 5, United States Code, including pro-  
8                   viding that any decision regarding the pub-  
9                   lic availability of a document under the  
10                  State laws is reviewable by a court of com-  
11                  petent jurisdiction;

12                  (D) agrees to maintain the financial re-  
13                  sources necessary to carry out the responsibil-  
14                  ities being assumed;

15                  (E) agrees to provide to the Secretary con-  
16                  cerned any information the Secretary concerned  
17                  considers necessary to ensure that the State or  
18                  Indian Tribe is adequately carrying out the re-  
19                  sponsibilities assigned to and assumed by the  
20                  State or Indian Tribe;

21                  (F) agrees to return revenues generated  
22                  from the use of public lands authorized under  
23                  this section to the United States annually, in  
24                  accordance with the Federal Land Policy Man-



1           agement Act of 1976 (43 U.S.C. 1701 et seq.);  
2           and

3                   (G) agrees to send a copy of all author-  
4           izing documents to the United States for proper  
5           notation and recordkeeping;

6           (5) prioritize and expedite any analyses under  
7           the National Environmental Policy Act of 1969 (42  
8           U.S.C. 4321 et seq.) under the memorandum of un-  
9           derstanding;

10           (6) not be granted to a State on Indian Lands  
11           without the consent of the relevant Indian Tribe;  
12           and

13           (7) not be granted to an Indian Tribe on State  
14           lands without the consent of the relevant State.

15           (f) LIMITATION.—Nothing in this section permits a  
16           State or Indian Tribe to assume—

17                   (1) any rulemaking authority of the Secretary  
18           concerned under any Federal law; and

19                   (2) Federal Government responsibilities for gov-  
20           ernment-to-government consultation with Indian  
21           Tribes.

22           (g) TERMINATION.—

23                   (1) TERMINATION BY THE SECRETARY.—The  
24           Secretary concerned may terminate the participation

1 of any State or Indian Tribe in the program estab-  
2 lished under this section if—

3 (A) the Secretary concerned determines  
4 that the State or Indian Tribe is not adequately  
5 carrying out the responsibilities assigned to and  
6 assumed by the State or Indian Tribe;

7 (B) the Secretary concerned provides to  
8 the State or Indian Tribe—

9 (i) notification of the determination of  
10 noncompliance; and

11 (ii) a period of at least 30 days during  
12 which to take such corrective action as the  
13 Secretary concerned determines is nec-  
14 essary to comply with the applicable agree-  
15 ment; and

16 (C) the State or Indian Tribe, after the no-  
17 tification and period provided under subpara-  
18 graph (B), fails to take satisfactory corrective  
19 action, as determined by the Secretary con-  
20 cerned.

21 (2) TERMINATION BY THE STATE OR INDIAN  
22 TRIBE.—A State or Indian Tribe may terminate the  
23 participation of the State or Indian Tribe in the pro-  
24 gram established under this section at any time by  
25 providing to the Secretary concerned a notice of in-

1 tent to terminate by not later than the date that is  
2 90 days before the date of termination.

3 (3) TERMINATION OF MEMORANDUM OF UN-  
4 DERSTANDING WITH STATE OR INDIAN TRIBE.—A  
5 State or an Indian Tribe may terminate a joint  
6 memorandum of understanding under this section at  
7 any time by providing to the Secretary concerned a  
8 notice of intent to terminate by no later than the  
9 date that is 90 days before the date of termination.

10 **SEC. 4. FEDERAL BROADBAND PERMIT COORDINATION.**

11 (a) ESTABLISHMENT.—The Secretary concerned  
12 shall establish a broadband permit streamlining team com-  
13 prised of qualified staff under subsection (b)(4) in each  
14 State or regional office that has been delegated responsi-  
15 bility for issuing permits for broadband projects.

16 (b) MEMORANDUM OF UNDERSTANDING.—

17 (1) IN GENERAL.—Not later than 90 days after  
18 the date of enactment of this Act, the Secretary con-  
19 cerned, in consultation with the National Conference  
20 of State Historic Preservation Officers and the Na-  
21 tional Tribal Historic Preservation Officers Associa-  
22 tion, shall enter into a memorandum of under-  
23 standing to carry out this section with—

24 (A) the Secretary of Agriculture or of the  
25 Interior, as appropriate;

1 (B) the Director of the Bureau of Indian  
2 Affairs; and

3 (C) the Director of the United States Fish  
4 and Wildlife Service.

5 (2) PURPOSE.—The purpose of the memo-  
6 randum of understanding under paragraph (1) is to  
7 coordinate and expedite permitting decisions for  
8 broadband projects.

9 (3) STATE OR TRIBAL PARTICIPATION.—The  
10 Secretary concerned may request that the Governor  
11 of any State or the officer designated by the gov-  
12 erning body of the Indian Tribe with one or more  
13 broadband projects be a party to the memorandum  
14 of understanding under paragraph (1).

15 (4) DESIGNATION OF QUALIFIED STAFF.—

16 (A) IN GENERAL.—Not later than 30 days  
17 after the date of entrance into the memo-  
18 randum of understanding under paragraph (1),  
19 the head of each Federal agency that is a party  
20 to the memorandum of understanding (other  
21 than the Secretary concerned) may, if the head  
22 of the Federal agency determines it to be ap-  
23 propriate, designate to each State or regional  
24 office an employee of that Federal agency with  
25 expertise in regulatory issues relating to that

1 Federal agency, including, as applicable, par-  
2 ticular expertise in—

3 (i) planning under the Forest and  
4 Rangeland Renewable Resources Planning  
5 Act of 1974 (16 U.S.C. 1600 et seq.) and  
6 planning under the Federal Land Policy  
7 Management Act of 1976 (43 U.S.C. 1701  
8 et seq.);

9 (ii) the preparation of analyses under  
10 the National Environmental Policy Act of  
11 1969 (42 U.S.C. 4321 et seq.); or

12 (iii) consultation and the preparation  
13 of biological opinions under section 7 of  
14 the Endangered Species Act of 1973 (16  
15 U.S.C. 1536).

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

18 (i) be responsible for any issue relat-  
19 ing to any broadband project within the ju-  
20 risdiction of the State or regional office  
21 under the authority of the Federal agency  
22 from which the employee is assigned;

23 (ii) participate as part of the team of  
24 personnel working on one or more pro-

1           posed broadband projects, including plan-  
2           ning and environmental analyses; and  
3           (iii) serve as the designated point of  
4           contact with any applicable State or Indian  
5           Tribe that assumes any responsibility  
6           under section 3(b)(1) relating to any issue  
7           described in clause (i).

Passed the House of Representatives September 12,  
2018.

Attest:

KAREN L. HAAS,  
*Clerk.*