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AMERICAN BROADBAND DEPLOYMENT ACT OF 2023

OCTOBER 2, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. RODGERS of Washington, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3557]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3557) to streamline Federal, State, and local permitting and regulatory reviews to expedite the deployment of communications facilities, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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49–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "American Broadband Deployment Act of 2023".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—STATE AND LOCAL SITING PROCESSES

SEC. 101. PRESERVATION OF LOCAL ZONING AUTHORITY.

Section 332(c) of the Communications Act of 1934 (47 U.S.C. 332(c)) is amended by striking paragraph (7) and inserting the following:

"(7) PRESERVATION OF LOCAL ZONING AUTHORITY.—

"(A) GENERAL AUTHORITY.—Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, or modification of personal wireless service facilities.

"(B) LIMITATIONS.—

"(i) IN GENERAL.—The regulation of the placement, construction, or modification of a personal wireless service facility by any State or local government or instrumentality thereof—

"(I) shall not discriminate among personal wireless service facilities or providers of communications service, including by providing exclusive or preferential use of facilities to a particular provider or class of providers of personal wireless service; and

"(II) shall not prohibit or have the effect of prohibiting the provision, improvement, or enhancement of personal wireless service.

"(ii) ENGINEERING STANDARDS; AESTHETIC REQUIREMENTS.—It is not a violation of clause (i) for a State or local government or instrumentality thereof to establish for personal wireless service facilities, or structures that support such facilities, objective, reasonable, and nondiscriminatory—

"(I) structural engineering standards based on generally applicable codes;

"(II) safety requirements (subject to clause (vi)); or

"(III) aesthetic or concealment requirements (unless such requirements prohibit or have the effect of prohibiting the installation or modification of such facilities or structures).

"(iii) TIMEFRAMES.—

"(I) IN GENERAL.—A State or local government or instrumentality thereof shall grant or deny a request for authorization to place, construct, or modify a personal wireless service facility not later than—

"(aa) in the case of a request for authorization to place, construct, or modify a personal wireless service facility that is not a small personal wireless service facility—

"(AA) if the request is for authorization to place, construct, or modify such facility using an existing structure, including with respect to an area that has not previously been zoned for personal wireless service facilities (other than small personal wireless service facilities), 90 days after the date on which the request is submitted by the requesting party to the government or instrumentality; or

"(BB) if the request is for any other action relating to such facility, 150 days after the date on which the request is submitted by the requesting party to the government or instrumentality; and

"(bb) in the case of a request for authorization to place, construct, or modify a small personal wireless service facility—

"(AA) if the request is for authorization to place, construct, or modify such facility using an existing structure, including with respect to an area that has not previously been zoned for personal wireless service facilities, 60 days after the date on which the request is submitted by the requesting party to the government or instrumentality; or

"(BB) if the request is for any other action relating to such facility, 90 days after the date on which the request is submitted by the requesting party to the government or instrumentality.

"(II) TREATMENT OF BATCHED REQUESTS.—In the case of requests described in subclause (I) that are submitted as part of a single batch by the requesting party to the government or instrumentality on the same day, the applicable timeframe under such subclause for each request in the batch shall be the longest timeframe under such subclause that would be applicable to any request in the batch if such requests were submitted separately.

"(III) APPLICABILITY.—The applicable timeframe under subclause (I) shall apply collectively to all proceedings required by a State or local government or instrumentality thereof for the approval of the request.

"(IV) NO MORITORIA.—A timeframe under subclause (I) may not be tolled by any moratorium, whether express or de facto, imposed by a State or local government or instrumentality thereof on the submission, acceptance, or consideration of any request for authorization to place, construct, or modify a personal wireless service facility.

"(V) TOLLING DUE TO INCOMPLETENESS.—

"(aa) INITIAL REQUEST INCOMPLETE.—

"(AA) SMALL PERSONAL WIRELESS SERVICE FACILITIES.—If, not later than 10 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a request for authorization to place, construct, or modify a small personal wireless service facility, the government or instrumentality provides to the requesting party a written notice described in item (cc) with respect to the request, the timeframe described in subclause (I) is tolled with respect to the request and shall restart at zero on the date on which the requesting party submits to the government or instrumentality a supplemental submission in response to the notice.

"(BB) OTHER PERSONAL WIRELESS SERVICE FACILITIES.—If, not later than 30 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a request for authorization to place, construct, or modify a personal wireless service facility that is not a small personal wireless service facility, the government or instrumentality provides to the requesting party a written notice described in item (cc) with respect to the request, the timeframe described in subclause (I) is tolled with respect to the request until the date on which the requesting party submits to the government or

instrumentality a supplemental submission in response to the notice.

"(bb) SUPPLEMENTAL SUBMISSION INCOMPLETE.—If, not later than 10 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a supplemental submission in response to a written notice described in item (cc), the government or instrumentality provides to the requesting party a written notice described in item (cc) with respect to the supplemental submission, the timeframe under subclause (I) is further tolled until the date on which the requesting party submits to the government or instrumentality a subsequent supplemental submission in response to the notice.

"(cc) WRITTEN NOTICE DESCRIBED.—The written notice described in this item is, with respect to a request described in subclause (I) or a supplemental submission described in item (aa) or (bb) submitted to a State or local government or instrumentality thereof by a requesting party, a written notice from the government or instrumentality to the requesting party—

"(AA) stating that all of the information (including any form or other document) required by the government or instrumentality to be submitted for the request to be considered complete has not been submitted;

"(BB) identifying the information described in subitem (AA) that was not submitted; and

"(CC) including a citation to a specific provision of a publicly available rule, regulation, or standard issued by the government or instrumentality requiring that such information be submitted with such a request.

"(dd) LIMITATION ON SUBSEQUENT WRITTEN NOTICE.—If a written notice provided by a State or local government or instrumentality thereof to a requesting party under item (bb) with respect to a supplemental submission identifies as not having been submitted any information that was not identified as not having been submitted in the prior written notice under this subclause in response to which the supplemental submission was submitted, the subsequent written notice shall be treated as not having been provided to the requesting party.

"(VI) TOLLING BY MUTUAL AGREEMENT.—The timeframe under subclause (I) may be tolled by mutual agreement between the State or local government or instrumentality thereof and the requesting party.

"(iv) DEEMED GRANTED.—

"(I) IN GENERAL.—If a State or local government or instrumentality thereof fails to take final action to grant or deny a request within the applicable timeframe under subclause (I) of clause (iii), the request shall be deemed granted on the date on which the government or instrumentality receives a written notice of the failure from the requesting party.

"(II) RULE OF CONSTRUCTION.—In the case of a request that is deemed granted under subclause (I), the placement, construction, or modification requested in the request shall be considered to be authorized, without any further action by the government or instrumentality, beginning on the date on which the request is deemed granted under such subclause.

"(v) WRITTEN DECISION AND RECORD.—Any decision by a State or local government or instrumentality thereof to deny a request for authorization to place, construct, or modify a personal wireless service facility shall be—

"(I) in writing;

"(II) supported by substantial evidence contained in a written record; and

"(III) publicly released, and provided to the requesting party, on the same day such decision is made.

"(vi) ENVIRONMENTAL EFFECTS OF RADIO FREQUENCY EMISSIONS.—No State or local government or instrumentality thereof may regulate the operation, placement, construction, or modification of personal wireless service facilities on the basis of the environmental effects of radio fre-

quency emissions to the extent that such facilities or structures comply with the Commission's regulations concerning such emissions.

"(vii) FEES.—To the extent permitted by law, a State or local government or instrumentality thereof may charge a fee to consider a request for authorization to place, construct, or modify a personal wireless service facility or a fee for use of a right-of-way or a facility in a right-of-way owned or managed by the government or instrumentality for the placement, construction, or modification of a personal wireless service facility, if the fee is—

"(I) competitively neutral, technology neutral, and nondiscriminatory;

"(II) established in advance and publicly disclosed;

"(III) calculated—

"(aa) based on actual and direct costs for—

"(AA) review and processing of requests; and

"(BB) repairs and replacement of components and materials directly resulting from and affected by the placement, construction, or modification (including the installation or improvement) of personal wireless service facilities or repairs and replacement of equipment that facilitates the placement, construction, or modification (including the installation or improvement) of such facilities; and

"(bb) using, for purposes of item (aa), only costs that are objectively reasonable; and

"(IV) described to a requesting party in a manner that distinguishes between—

"(aa) nonrecurring fees and recurring fees; and

"(bb) the use of facilities on which personal wireless service facilities are already located and facilities on which there are no personal wireless service facilities as of the date on which the request is submitted by the requesting party to the government or instrumentality.

"(C) JUDICIAL OR ADMINISTRATIVE REVIEW.—

"(i) JUDICIAL REVIEW.—Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this paragraph may, within 30 days after the action or failure to act, commence an action in any court of competent jurisdiction, which shall hear and decide the action on an expedited basis.

"(ii) ADMINISTRATIVE REVIEW.—

"(I) IN GENERAL.—Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this paragraph may petition the Commission to review such action or failure to act.

"(II) TIMING.—Not later than 120 days after receiving a petition under subclause (I), the Commission shall grant or deny such petition.

"(D) WHEN REQUEST CONSIDERED SUBMITTED.—For the purposes of this paragraph, a request to a State or local government or instrumentality thereof shall be considered submitted on the date on which the requesting party takes the first procedural step within the control of the requesting party—

"(i) to submit such request in accordance with the procedures established by the government or instrumentality for the review and approval of such a request; or

"(ii) in the case of a government or instrumentality that has not established specific procedures for the review and approval of such a request, to submit to the government or instrumentality the type of filing that is typically required to initiate a standard review for a similar facility or structure.

"(E) RULE OF CONSTRUCTION.—Nothing in this paragraph may be construed to affect section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455(a)).

"(F) DEFINITIONS.—In this paragraph:

"(i) ANTENNA.—The term 'antenna' means an apparatus designed for the purpose of emitting radiofrequency radiation, to be operated or operating from a fixed location for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds.

"(ii) COMMUNICATIONS NETWORK.—The term 'communications network' means a network used to provide a communications service.

"(iii) COMMUNICATIONS SERVICE.—The term 'communications service' means each of—

"(I) cable service, as defined in section 602;

"(II) information service;

"(III) telecommunications service; and

"(IV) personal wireless service.

"(iv) GENERALLY APPLICABLE CODE.—The term 'generally applicable code' means a uniform building, fire, electrical, plumbing, or mechanical code adopted by a national code organization, or a local amendment to such a code, to the extent not inconsistent with this Act.

"(v) NETWORK INTERFACE DEVICE.—The term 'network interface device' means a telecommunications demarcation device and cross-connect point that—

"(I) is adjacent or proximate to—

"(aa) a small personal wireless service facility; or

"(bb) a structure supporting a small personal wireless service facility; and

"(II) demarcates the boundary with any wireline backhaul facility.

"(vi) PERSONAL WIRELESS SERVICE.—The term 'personal wireless service' means any fixed or mobile service (other than a broadcasting service) provided via licensed or unlicensed frequencies, including—

"(I) commercial mobile service;

"(II) commercial mobile data service (as defined in section 6001 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1401));

"(III) unlicensed wireless service; and

"(IV) common carrier wireless exchange access service.

"(vii) PERSONAL WIRELESS SERVICE FACILITY.—The term 'personal wireless service facility' means a facility used to provide or support the provision of personal wireless service.

"(viii) SMALL PERSONAL WIRELESS SERVICE FACILITY.—The term 'small personal wireless service facility' means a personal wireless service facility in which each antenna is not more than 3 cubic feet in volume (excluding a wireline backhaul facility connected to such personal wireless service facility).

"(ix) UNLICENSED WIRELESS SERVICE.—The term 'unlicensed wireless service'—

"(I) means the offering of telecommunications service or information service using a duly authorized device that does not require an individual license; and

"(II) does not include the provision of direct-to-home satellite services, as defined in section 303(v).

"(x) WIRELINE BACKHAUL FACILITY.—The term 'wireline backhaul facility' means an above-ground or underground wireline facility used to transport communications service or other electronic communications from a small personal wireless service facility or the adjacent network interface device of such facility to a communications network.".

SEC. 102. REMOVAL OF BARRIERS TO ENTRY.

Section 253 of the Communications Act of 1934 (47 U.S.C. 253) is amended to read as follows:

"SEC. 253. REMOVAL OF BARRIERS TO ENTRY.

"(a) IN GENERAL.—No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide, improve, or enhance the provision of any interstate or intrastate telecommunications service.

"(b) PLACEMENT, CONSTRUCTION, OR MODIFICATION OF TELECOMMUNICATIONS SERVICE FACILITIES.—

"(1) PROHIBITION ON DISCRIMINATION.—The regulation of the placement, construction, or modification of a telecommunications service facility by a State or local government or instrumentality thereof may not discriminate—

"(A) among telecommunications service facilities—

"(i) based on the technology used to provide services; or

"(ii) based on the services provided; or

"(B) against telecommunications service facilities, as compared to the regulation of the placement, construction, or modification of other facilities.

"(2) TIMEFRAME TO GRANT OR DENY REQUESTS.—

"(A) IN GENERAL.—A State or local government or instrumentality thereof shall grant or deny a request for authorization to place, construct, or modify a telecommunications service facility not later than—

"(i) if the request is for authorization to place, construct, or modify such facility in or on eligible support infrastructure, 90 days after the date on which the request is submitted by the requesting party to the government or instrumentality; or

"(ii) for any other action relating to such facility, 150 days after the date on which the request is submitted by the requesting party to the government or instrumentality.

"(B) APPLICABILITY.—The applicable timeframe under subparagraph (A) shall apply collectively to all proceedings, including permits and authorizations, required by a State or local government or instrumentality thereof for the approval of the request.

"(C) NO MORITORIA.—A timeframe under subparagraph (A) may not be tolled by any moratorium, whether express or de facto, imposed by a State or local government or instrumentality thereof on the submission, acceptance, or consideration of requests for authorization to place, construct, or modify a telecommunications service facility.

"(D) TOLLING DUE TO INCOMPLETENESS.—

"(i) INITIAL REQUEST INCOMPLETE.—If, not later than 30 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a request for authorization to place, construct, or modify a telecommunications service facility, the government or instrumentality provides to the requesting party a written notice described in clause (iii) with respect to the request, the timeframe described in subparagraph (A) is tolled with respect to the request until the date on which the requesting party submits to the government or instrumentality a supplemental submission in response to the notice.

"(ii) SUPPLEMENTAL SUBMISSION INCOMPLETE.—If, not later than 10 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a supplemental submission in response to a written notice described in clause (iii), the government or instrumentality provides to the requesting party a written notice described in clause (iii) with respect to the supplemental submission, the timeframe under subparagraph (A) is further tolled until the date on which the requesting party submits to the government or instrumentality a subsequent supplemental submission in response to the notice.

"(iii) WRITTEN NOTICE DESCRIBED.—The written notice described in this clause is, with respect to a request described in subparagraph (A) or a supplemental submission described in clause (i) or (ii) submitted to a State or local government or instrumentality thereof by a requesting party, a written notice from the government or instrumentality to the requesting party—

"(I) stating that all of the information (including any form or other document) required by the government or instrumentality to be submitted for the request to be considered complete has not been submitted;

"(II) identifying the information described in subclause (I) that was not submitted; and

"(III) including a citation to a specific provision of a publicly available rule, regulation, or standard issued by the government or instrumentality requiring that such information be submitted with such a request.

"(iv) LIMITATION ON SUBSEQUENT WRITTEN NOTICE.—If a written notice provided by a State or local government or instrumentality thereof to a requesting party under clause (ii) with respect to a supplemental submission identifies as not having been submitted any information that was not identified as not having been submitted in the prior written notice under this subparagraph in response to which the supplemental submission was submitted, the subsequent written notice shall be treated as not having been provided to the requesting party.

"(E) TOLLING BY MUTUAL AGREEMENT.—The timeframe under subparagraph (A) may be tolled by mutual agreement between the State or local government or instrumentality thereof and the requesting party.

"(3) DEEMED GRANTED.—

"(A) IN GENERAL.—If a State or local government or instrumentality thereof has neither granted nor denied a request within the applicable

timeframe under paragraph (2), the request shall be deemed granted on the date on which the government or instrumentality receives a written notice of the failure to grant or deny from the requesting party.

"(B) RULE OF CONSTRUCTION.—In the case of a request that is deemed granted under subparagraph (A), the placement, construction, or modification requested in such request shall be considered to be authorized, without any further action by the government or instrumentality, beginning on the date on which such request is deemed granted under such subparagraph.

"(4) WRITTEN DECISION AND RECORD.—A decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify a telecommunications service facility shall be—

"(A) in writing;

"(B) supported by substantial evidence contained in a written record; and

"(C) publicly released, and provided to the requesting party, on the same day such decision is made.

"(5) FEES.—

"(A) IN GENERAL.—To the extent permitted by law, a State or local government or instrumentality thereof may charge a fee that meets the requirements under subparagraph (B)—

"(i) to consider a request for authorization to place, construct, or modify a telecommunications service facility; or

"(ii) for use of a right-of-way or a facility in a right-of-way owned or managed by the government or instrumentality for the placement, construction, or modification of a telecommunications service facility.

"(B) REQUIREMENTS.—A fee charged under subparagraph (A) shall be—

"(i) competitively neutral, technology neutral, and nondiscriminatory;

"(ii) established in advance and publicly disclosed;

"(iii) calculated—

"(I) based on actual and direct costs for—

"(aa) review and processing of requests; and

"(bb) repairs and replacement of—

"(AA) components and materials directly resulting from and affected by the placement, construction, or modification (including the installation or improvement) of telecommunications service facilities; or

"(BB) equipment that facilitates the placement, construction, or modification (including the installation or improvement) of such facilities; and

"(II) using, for purposes of subclause (I), only costs that are objectively reasonable; and

"(iv) described to a requesting party in a manner that distinguishes between—

"(I) nonrecurring fees and recurring fees; and

"(II) the use of facilities on which telecommunications service facilities or infrastructure for compatible uses are already located and facilities on which there are no telecommunications service facilities or infrastructure for compatible uses as of the date on which the request is submitted by the requesting party to the government or instrumentality.

"(6) TRANSPORTATION CROSSINGS.—

"(A) IN GENERAL.—An authorization by a State or local government or instrumentality thereof to place, construct, or modify a telecommunications service facility in a right-of-way owned or managed by the government or instrumentality shall be treated, without further action, as sufficient authority to place, construct, or modify such facility (as the case may be) above or under a transportation crossing that intersects such right-of-way.

"(B) REGULATIONS.—Not later than 1 year after the date of the enactment of this paragraph, the Commission, in coordination with the Secretary of Transportation, shall promulgate regulations to implement subparagraph (A) in a manner that—

"(i) ensures safety;

"(ii) prevents interference with transportation crossings and related transportation operations;

"(iii) allows for the timely and efficient placement, construction, and modification of telecommunications service facilities; and

"(iv) establishes requirements and standards for just and reasonable compensation to private owners of transportation crossings affected by such subparagraph, including compensation for costs related to the deployment of such facilities.

"(C) APPLICABILITY.—Subparagraph (A) shall apply to authorizations granted on and after the date on which regulations are promulgated under subparagraph (B).

"(c) JUDICIAL REVIEW.—

"(1) IN GENERAL.—A person adversely affected by a State or local statute, regulation, or other legal requirement, or by a final action or failure to act by a State or local government or instrumentality thereof, that is inconsistent with this section may commence an action in any court of competent jurisdiction.

"(2) TIMING.—

"(A) EXPEDITED BASIS.—A court shall hear and decide an action commenced under paragraph (1) on an expedited basis.

"(B) FINAL ACTION OR FAILURE TO ACT.—An action may only be commenced under paragraph (1) on the basis of a final action or failure to act by a State or local government or instrumentality thereof, if commenced not later than 30 days after such action or failure to act.

"(d) PRESERVATION OF STATE REGULATORY AUTHORITY.—Nothing in this section shall affect the ability of a State to impose, on a competitively neutral and nondiscriminatory basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

"(e) PRESERVATION OF STATE AND LOCAL GOVERNMENT AUTHORITY.—Except as explicitly set forth in this section, nothing in this section affects the authority of a State or local government or instrumentality thereof to manage, on a competitively neutral and nondiscriminatory basis, the public rights-of-way or to require, on a competitively neutral and nondiscriminatory basis, fair and reasonable compensation from telecommunications providers for use of public rights-of-way, if the compensation required meets the requirements of subsection (b)(5).

"(f) PREEMPTION.—

"(1) IN GENERAL.—If, after notice and an opportunity for public comment, the Commission determines that a State or local government or instrumentality thereof has permitted or imposed a statute, regulation, or legal requirement that violates or is inconsistent with this section, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

"(2) TIMING.—Not later than 120 days after receiving a petition for preemption of the enforcement of a statute, regulation, or legal requirement as described in paragraph (1), the Commission shall grant or deny the petition.

"(g) COMMERCIAL MOBILE SERVICE PROVIDERS; CABLE OPERATORS.—Nothing in this section shall affect the application of section 332(c)(3) to commercial mobile service providers or section 621 to cable operators.

"(h) RURAL MARKETS.—It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply—

"(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) that effectively prevents a competitor from meeting the requirements of section 214(e)(1); and

"(2) to a provider of commercial mobile services.

"(i) WHEN REQUEST CONSIDERED SUBMITTED.—For the purposes of this section, a request to a State or local government or instrumentality thereof shall be considered submitted on the date on which the requesting party takes the first procedural step within the control of the requesting party—

"(1) to submit such request in accordance with the procedures established by the government or instrumentality for the review and approval of such a request; or

"(2) in the case of a government or instrumentality that has not established specific procedures for the review and approval of such a request, to submit to the government or instrumentality the type of filing that is typically required to initiate a standard review for a similar facility or structure.

"(j) DEFINITIONS.—In this section:

"(1) ELIGIBLE SUPPORT INFRASTRUCTURE.—The term 'eligible support infrastructure' means infrastructure that supports or houses a telecommunications service facility (or that is designed for or capable of supporting or housing such a facility) at the time when a request to a State or local government or instrumentality thereof for authorization to place, construct, or modify a telecommuni-

cations service facility in or on the infrastructure is submitted by the requesting party to the government or instrumentality.

"(2) TELECOMMUNICATIONS SERVICE FACILITY.—The term 'telecommunications service facility'—

"(A) means a facility that is designed or used to provide or facilitate the provision of any interstate or intrastate telecommunications service; and

"(B) includes a facility described in subparagraph (A) that is used to provide other services.".

SEC. 103. REQUESTS FOR MODIFICATION OF CERTAIN EXISTING WIRELESS AND TELECOMMUNICATIONS SERVICE FACILITIES.

(a) IN GENERAL.—Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455) is amended—

(1) in the heading, by striking "**WIRELESS**" and inserting "**COMMUNICATIONS**"; and

(2) in subsection (a)—

(A) in paragraph (1), by striking "a State or local government" and all that follows and inserting the following: "a State or local government or instrumentality thereof may not deny, and shall approve—

"(A) any eligible facilities request for a modification of an existing wireless tower, base station, or eligible support structure that does not substantially change the physical dimensions of such wireless tower, base station, or eligible support structure; and

"(B) any eligible telecommunications facilities request for a modification of an existing telecommunications service facility in or on eligible support infrastructure that does not substantially change the physical dimensions of such facility.";

(B) by amending paragraph (2) to read as follows:

"(2) TIMEFRAME.—

"(A) DEEMED APPROVAL.—

"(i) IN GENERAL.—If a State or local government or instrumentality thereof does not, before or on the date that is 60 days after the date on which a requesting party submits to the government or instrumentality a request as an eligible facilities request or an eligible telecommunications facilities request (as the case may be), approve the request or make the determination and provide the written notice described in subparagraph (B) with respect to the request, the request is deemed approved on the day after the date that is 60 days after the date on which the requesting party submits the request.

"(ii) RULE OF CONSTRUCTION.—In the case of a request that is deemed approved under clause (i), the modification requested in the request shall be authorized, without any further action by the government or instrumentality, beginning on the date on which the request is deemed approved under such clause.

"(B) DETERMINATION REQUEST IS NOT AN ELIGIBLE REQUEST.—

"(i) DETERMINATION DESCRIBED.—The determination described in this subparagraph is a determination by a State or local government or instrumentality thereof that a request described in subparagraph (A)(i) is not an eligible facilities request or an eligible telecommunications facilities request (as the case may be).

"(ii) WRITTEN NOTICE DESCRIBED.—The written notice described in this subparagraph is a written notice of the determination described in clause (i) provided by the government or instrumentality to the requesting party that clearly describes the reasons why the request is not an eligible facilities request or an eligible telecommunications facilities request (as the case may be) and includes a citation to a specific provision of this subsection or the regulations promulgated under this subsection relied upon for the determination.

"(C) TOLLING DUE TO INCOMPLETENESS.—

"(i) INITIAL REQUEST INCOMPLETE.—If, not later than 30 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a request described in subparagraph (A)(i), the government or instrumentality provides to the requesting party a written notice described in clause (iii) with respect to the request, the 60-day timeframe under subparagraph (A)(i) is tolled until the date on which the requesting party submits to the government or instrumentality a supplemental submission in response to the notice.

"(ii) SUPPLEMENTAL SUBMISSION INCOMPLETE.—If, not later than 10 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a supplemental submission

in response to a written notice described in clause (iii), the government or instrumentality provides to the requesting party a written notice described in clause (iii) with respect to the supplemental submission, the 60-day timeframe under subparagraph (A)(i) is further tolled until the date on which the requesting party submits to the government or instrumentality a subsequent supplemental submission in response to the notice.

"(iii) WRITTEN NOTICE DESCRIBED.—The written notice described in this clause is, with respect to a request described in subparagraph (A)(i) or a supplemental submission described in clause (i) or (ii) submitted to a State or local government or instrumentality thereof by a requesting party, a written notice from the government or instrumentality to the requesting party—

"(I) stating that all of the information (including any form or other document) required by the government or instrumentality to be submitted for the request to be considered complete has not been submitted;

"(II) identifying the information described in subclause (I) that was not submitted; and

"(III) including a citation to a specific provision of a publicly available rule, regulation, or standard issued by the government or instrumentality requiring that such information be submitted with such a request.

"(iv) LIMITATION.—

"(I) INITIAL WRITTEN NOTICE.—If a written notice provided by a State or local government or instrumentality thereof to a requesting party under clause (i) with respect to a request described in subparagraph (A)(i) identifies as not having been submitted any information that the government or instrumentality is prohibited by paragraph (5) from requiring to be submitted, such notice shall be treated as not having been provided to the requesting party.

"(II) SUBSEQUENT WRITTEN NOTICE.—If a written notice provided by a State or local government or instrumentality thereof to a requesting party under clause (ii) with respect to a supplemental submission identifies as not having been submitted any information that was not identified as not having been submitted in the prior written notice under this subparagraph in response to which the supplemental submission was submitted, the subsequent written notice shall be treated as not having been provided to the requesting party.

"(D) TOLLING BY MUTUAL AGREEMENT.—The 60-day timeframe under subparagraph (A)(i) may be tolled by mutual agreement between the State or local government or instrumentality thereof and the requesting party."; and

(C) by adding at the end the following:

"(4) WHEN REQUEST CONSIDERED SUBMITTED.—

"(A) IN GENERAL.—For the purposes of this subsection, a request described in paragraph (2)(A)(i) shall be considered submitted on the date on which the requesting party takes the first procedural step within the control of the requesting party—

"(i) to submit such request in accordance with the procedures established by the government or instrumentality for the review and approval of such a request; or

"(ii) in the case of a government or instrumentality that has not established specific procedures for the review and approval of such a request, to submit to the government or instrumentality the type of filing that is typically required to initiate a standard review for a similar facility or structure.

"(B) NO PRE-APPLICATION REQUIREMENTS.—A State or local government or instrumentality thereof may not require a requesting party to undertake any process, meeting, or other step prior to or as a prerequisite to a request being considered submitted.

"(5) LIMITATION ON REQUIRED DOCUMENTATION.—A State or local government or instrumentality thereof may require a requesting party submitting a request as an eligible facilities request or an eligible telecommunications facilities request to submit information (including a form or other document) with such request only to the extent that such information is reasonably related to determining whether such request is an eligible facilities request or an eligible telecommunications facilities request (as the case may be) and is identified in a publicly available rule, regulation, or standard issued by the government or in-

strumentality requiring that such information be submitted with such a request. A State or local government or instrumentality thereof may not require a requesting party to submit any other documentation or information with such a request.

"(6) ENFORCEMENT.—

"(A) IN GENERAL.—A requesting party may bring an action in any district court of the United States to enforce the provisions of this subsection.

"(B) EXPEDITED REVIEW.—A district court of the United States shall consider an action under subparagraph (A) on an expedited basis.

"(7) DEFINITIONS.—In this subsection:

"(A) ELIGIBLE FACILITIES REQUEST.—The term 'eligible facilities request' means any request for a modification of an existing wireless tower, base station, or eligible support structure that does not substantially change the physical dimensions of such wireless tower, base station, or eligible support structure and that involves—

"(i) collocation of new transmission equipment;

"(ii) removal of transmission equipment;

"(iii) replacement of transmission equipment; or

"(iv) placement, construction, or modification of equipment that—

"(I) improves the resiliency of the wireless tower, base station, or eligible support structure; and

"(II) provides a direct benefit to public safety, such as—

"(aa) providing backup power for the wireless tower, base station, or eligible support structure;

"(bb) hardening the wireless tower, base station, or eligible support structure; or

"(cc) providing more reliable connection capability using the wireless tower, base station, or eligible support structure.

"(B) ELIGIBLE SUPPORT INFRASTRUCTURE.—The term 'eligible support infrastructure' means infrastructure that supports or houses a telecommunications service facility at the time when an eligible telecommunications facilities request for a modification of such facility is submitted to a State or local government or instrumentality thereof.

"(C) ELIGIBLE SUPPORT STRUCTURE.—The term 'eligible support structure' means a structure that, at the time when an eligible facilities request for a modification of such structure is submitted to a State or local government or instrumentality thereof, supports or could support transmission equipment.

"(D) ELIGIBLE TELECOMMUNICATIONS FACILITIES REQUEST.—The term 'eligible telecommunications facilities request' means any request for a modification of an existing telecommunications service facility in or on eligible support infrastructure that does not substantially change the physical dimensions of such facility and that involves—

"(i) collocation of new telecommunications service facility equipment;

"(ii) removal of telecommunications service facility equipment; or

"(iii) replacement of telecommunications service facility equipment.

"(E) TELECOMMUNICATIONS SERVICE FACILITY.—The term 'telecommunications service facility'—

"(i) means a facility that is designed or used to provide or facilitate the provision of any interstate or intrastate telecommunications service; and

"(ii) includes a facility described in clause (i) that is used to provide other services.

"(F) TRANSMISSION EQUIPMENT.—The term 'transmission equipment' has the meaning given such term in section 1.6100(b)(8) of title 47, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).".

(b) IMPLEMENTATION.—Not later than 180 days after the date of the enactment of this Act, the Federal Communications Commission shall issue final rules to implement the amendments made by subsection (a).

(c) APPLICABILITY.—The amendments made by subsection (a) shall apply with respect to any eligible facilities request or eligible telecommunications facilities request described in paragraph (1) of section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455(a)) that is submitted (as determined under paragraph (4) of such section, as added by subsection (a)) by a requesting party on or after the date of the enactment of this Act.

TITLE II—CABLE

SEC. 201. REQUEST FOR NEW FRANCHISE.

Section 621 of the Communications Act of 1934 (47 U.S.C. 541) is amended by adding at the end the following:

"(g) TIMING OF DECISION ON REQUEST FOR FRANCHISE.—

"(1) IN GENERAL.—Not later than 120 days after the date on which a requesting party submits to a franchising authority a request for the grant of a franchise (other than a renewal thereof), the franchising authority shall approve or deny such request.

"(2) DEEMED GRANT OF NEW FRANCHISE.—If the franchising authority does not approve or deny a request under paragraph (1) by the day after the date on which the time period ends under such paragraph, such request shall be deemed granted on such day.

"(3) APPLICABILITY.—Notwithstanding any provision of this title, the timeframe under paragraph (1) shall apply collectively to all proceedings required by a franchising authority for the approval of the request.

"(4) NO MORITORIA.—A timeframe under paragraph (1) may not be tolled by any moratorium, whether express or de facto, imposed by a franchising authority on the consideration of any request for a franchise.

"(5) TOLLING DUE TO INCOMPLETENESS.—

"(A) INITIAL REQUEST INCOMPLETE.—If, not later than 30 days after the date on which a requesting party provides to a franchising authority a written notice described in subparagraph (C) with respect to the request, the timeframe described in paragraph (1) is tolled with respect to the request until the date on which the requesting party submits to the franchising authority a supplemental submission in response to the notice.

"(B) SUPPLEMENTAL SUBMISSION INCOMPLETE.—If, not later than 10 days after the date on which a requesting party submits to the franchising authority a supplemental submission in response to a written notice described in subparagraph (A), the franchising authority provides to the requesting party a written notice described in subparagraph (A) with respect to the supplemental submission, the timeframe under paragraph (1) is further tolled until the date on which the requesting party submits to the franchising authority a subsequent supplemental submission in response to the notice.

"(C) WRITTEN NOTICE DESCRIBED.—The written notice described in this paragraph is, with respect to a request described in paragraph (1) or a supplemental submission described in subparagraph (A) or (B) submitted to a franchising authority by a requesting party, a written notice from the franchising authority to the requesting party—

"(i) stating that all of the information (including any form or other document) required by the franchising authority to be submitted for the request to be considered complete has not been submitted;

"(ii) identifying the information described in clause (i) that was not submitted; and

"(iii) including a citation to a specific provision of a publicly available rule, regulation, or standard issued by the franchising authority requiring that such information be submitted with such a request.

"(D) LIMITATION ON SUBSEQUENT WRITTEN NOTICE.—If a written notice provided by a franchising authority to a requesting party under subparagraph (A) with respect to a supplemental submission identifies as not having been submitted any information that was not identified as not having been submitted in the prior written notice under this subparagraph in response to which the supplemental submission was submitted, the subsequent written notice shall be treated as not having been provided to the requesting party.

"(6) TOLLING BY MUTUAL AGREEMENT.—The timeframe under paragraph (1) may be tolled by mutual agreement between the franchising authority and the requesting party.

"(7) WRITTEN DECISION AND RECORD.—Any decision by a franchising authority to deny a request for a franchise shall be—

"(A) in writing;

"(B) supported by substantial evidence contained in a written record; and

"(C) publicly released, and provided to the requesting party, on the same day such decision is made.

"(8) WHEN REQUEST CONSIDERED SUBMITTED.—For the purposes of this subsection, a request to a franchising authority shall be considered submitted on

the date on which the requesting party takes the first procedural step within the control of the requesting party—

"(A) to submit such request in accordance with the procedures established by the franchising authority for the review and approval of such a request; or

"(B) in the case of a franchising authority that has not established specific procedures for the review and approval of such a request, to submit to the franchising authority the type of filing that is typically required to initiate a standard review for a request related to a franchise.".

SEC. 202. REQUEST REGARDING PLACEMENT, CONSTRUCTION, OR MODIFICATION OF CABLE EQUIPMENT.

(a) IN GENERAL.—Section 624 of the Communications Act of 1934 (47 U.S.C. 544) is amended by adding at the end the following:

"(j) REQUEST REGARDING PLACEMENT, CONSTRUCTION, OR MODIFICATION OF FACILITIES.—

"(1) NO EFFECT ON AUTHORITY OF CERTAIN ENTITIES.—Except as provided in this subsection, nothing in this title shall limit or affect the authority of a covered entity over—

"(A) decisions regarding the placement, construction, or modification of covered equipment within the jurisdiction of such covered entity; or

"(B) safety standards for the placement, construction, or modification of such covered equipment.

"(2) LIMITATIONS.—

"(A) ABILITY TO PROVIDE OR ENHANCE SERVICE.—With respect to the regulation by a covered entity of the placement, construction, or modification of covered equipment, the covered entity shall not prohibit or have the effect of prohibiting the ability of a cable operator to provide, improve, or enhance the provision of service using covered equipment under a franchise granted by such covered entity, or within the jurisdiction of such covered entity, as so may be the case.

"(B) TIMING OF DECISIONS ON REQUESTS FOR AUTHORIZATIONS TO PLACE, CONSTRUCT, OR MODIFY FACILITY.—

"(i) TIMEFRAME.—A covered entity shall approve or deny a request for authorization to place, construct, or modify covered equipment not later than—

"(I) if the request is for authorization to place, construct, or modify covered equipment in or on a covered easement or eligible support infrastructure, 90 days after the date on which requesting party submits the request to the covered entity; or

"(II) if the request is not for authorization to place, construct, or modify covered equipment in or on a covered easement or eligible support infrastructure, 150 days after the date on which the requesting party submits the request to the covered entity.

"(ii) DEEMED GRANTED.—If a covered entity fails to grant or deny a request by the applicable timeframe under clause (i), the request shall be deemed granted and authorized on the date on which the covered entity receives written notice of the failure from the requesting party.

"(iii) APPLICABILITY.—Notwithstanding any provision of this title, the applicable timeframe under clause (i) shall apply collectively to all proceedings required by a covered entity for the approval of the request.

"(iv) NO MORITORIA.—A timeframe under clause (i) may not be tolled by any moratorium, whether express or de facto, imposed by a covered entity on the consideration of any request for authorization to place, construct, or modify covered equipment.

"(v) TOLLING DUE TO INCOMPLETENESS.—

"(I) INITIAL REQUEST INCOMPLETE.—If, not later than 30 days after the date on which a requesting party submits to a covered entity a request for authorization to place, construct, or modify covered equipment, the covered entity provides to the requesting party a written notice described in subclause (III) with respect to the request, the timeframe described in clause (i) is tolled with respect to the request until the date on which the requesting party submits to the covered entity a supplemental submission in response to the notice.

"(II) SUPPLEMENTAL SUBMISSION INCOMPLETE.—If, not later than 10 days after the date on which a requesting party submits to the covered entity a supplemental submission in response to a written notice described in subclause (III), the covered entity provides to the requesting party a written notice described in subclause (III)

with respect to the supplemental submission, the timeframe under clause (i) is further tolled until the date on which the requesting party submits to the covered entity a subsequent supplemental submission in response to the notice.

"(III) WRITTEN NOTICE DESCRIBED.—The written notice described in this subclause is, with respect to a request described in clause (i) or a supplemental submission described in subclause (I) or (II) submitted to a covered entity by a requesting party, a written notice from the requesting party to the covered entity—

"(aa) stating that all of the information (including any form or other document) required by the covered entity to be submitted for the request to be considered complete has not been submitted;

"(bb) identifying the information described in item (aa) that was not submitted; and

"(cc) including a citation to a specific provision of a publicly available rule, regulation, or standard issued by the covered entity requiring that such information be submitted with such a request.

"(IV) LIMITATION ON SUBSEQUENT WRITTEN NOTICE.—If a written notice provided by covered entity to a requesting party under subclause (I) with respect to a supplemental submission identifies as not having been submitted any information that was not identified as not having been submitted in the prior written notice under this subparagraph in response to which the supplemental submission was submitted, the subsequent written notice shall be treated as not having been provided to the requesting party.

"(vi) TOLLING BY MUTUAL AGREEMENT.—The timeframe under clause (i) may be tolled by mutual agreement between the covered entity and the requesting party.

"(vii) WRITTEN DECISION AND RECORD.—Any decision by a covered entity to deny a request for authorization to place, construct, or modify covered equipment shall be—

"(I) in writing;

"(II) supported by substantial evidence contained in a written record; and

"(III) publicly released, and provided to the requesting party, on the same day such decision is made.

"(viii) WHEN REQUEST CONSIDERED SUBMITTED.—For the purposes of this subparagraph, a request to a covered entity shall be considered submitted on the date on which the requesting party takes the first procedural step within the control of the requesting party—

"(I) to submit such request in accordance with the procedures established by the covered entity for the review and approval of such a request; or

"(II) in the case of a covered entity that has not established specific procedures for the review and approval of such a request, to submit to the covered entity the type of filing that is typically required to initiate a standard review for a similar request in a jurisdiction that has not established specific procedures for the relevant review and approval of such a request.

"(3) FEES.—

"(A) IN GENERAL.—A covered entity may charge a fee that meets the requirements under subparagraph (B) to consider a request for authorization to place, construct, or modify covered equipment.

"(B) REQUIREMENTS.—A fee charged under subparagraph (A) shall be—

"(i) competitively neutral, technology neutral, and nondiscriminatory;

"(ii) established and publicly disclosed in advance;

"(iii) calculated—

"(I) based on actual and direct costs for—

"(aa) review and processing of requests; and

"(bb) repairs and replacement of—

"(AA) components and materials directly resulting from and affected by the placement, construction, or modification of the covered equipment (including components and materials directly resulting from and affected by the installation of covered equipment or, with respect to the placement, construction, or modification of the covered

equipment, the improvement of an eligible support infrastructure); or

"(BB) equipment that facilitates the repair and replacement of such components and materials;

"(II) using, for purposes of subclause (I), only costs that are objectively reasonable; and

"(III) described to a requesting party in a manner that distinguishes between nonrecurring fees and recurring fees.

"(C) NO RELATION TO FRANCHISE FEES.—A fee charged under this paragraph to consider a request for authorization to place, construct, or modify covered equipment may not be considered a franchise fee under section 622.

"(4) DEFINITIONS.—In this subsection:

"(A) COVERED EASEMENT.—The term 'covered easement' means an easement or public right-of-way that exists at the time when a request to a covered entity for authorization to place, construct, or modify the covered equipment in or on the easement or public right-of-way is submitted to the covered entity.

"(B) COVERED EQUIPMENT.—The term 'covered equipment' means equipment used in or attached to a cable system to provide service through such system.

"(C) COVERED ENTITY.—The term 'covered entity' means:

"(i) A State.

"(ii) A local government.

"(iii) An instrumentality of a State or a local government.

"(iv) A franchising authority.

"(D) ELIGIBLE SUPPORT INFRASTRUCTURE.—The term 'eligible support infrastructure' means infrastructure that supports or houses a facility for communication by wire (or that is designed for or capable of supporting or housing such a facility) at the time when a request to a covered entity for authorization to place, construct, or modify covered equipment in or on the infrastructure is submitted to the covered entity.".

(b) ACTION ON PENDING REQUESTS.—

(1) APPLICATION.—Paragraphs (2)(B) and (4) of section 624(j) of the Communications Act of 1934 (47 U.S.C. 544(j)), as added by subsection (a), shall apply to a—

(A) request submitted to a covered entity (as such term is defined in section 624(j) of the Communications Act of 1934)—

(i) before the date of the enactment of this Act; and

(ii) has not been approved or denied by the covered entity on or before such date; and

(B) a request submitted to a covered entity on or after the date of the enactment of this Act.

(2) DATE OF RECEIPT.—The date of receipt by a covered entity of a request described under subsection (a)(1) shall be deemed to be the date of the enactment of this Act.

SEC. 203. CABLE FRANCHISE TERM AND TERMINATION.

(a) ELIMINATION OR MODIFICATION OF REQUIREMENT IN FRANCHISE.—Section 625 of the Communications Act of 1934 (47 U.S.C. 545) is amended to read as follows:

"SEC. 625. ELIMINATION OR MODIFICATION OF REQUIREMENT IN FRANCHISE.

"(a) IN GENERAL.—During the period in which a franchise is in effect, the cable operator may obtain the elimination or modification of any requirement in the franchise by submitting to the franchising authority a request for the elimination or modification of such requirement.

"(b) ELIMINATION OR MODIFICATION OF REQUIREMENT IN FRANCHISE.—

"(1) REQUIREMENT.—The franchising authority shall eliminate or modify a requirement in accordance with a request submitted under subsection (a) not later than 120 days after the cable operator submits the request to the franchising authority if the cable operator demonstrates in the request—

"(A) good cause for the elimination or modification of the requirement, including the need to eliminate or modify the requirement—

"(i) to conform to an applicable Federal or State law;

"(ii) to address changes in technology; or

"(iii) in the case of a requirement applicable to the cable operator, due to commercial impracticability; and

"(B) that the mix, quality, and level of cable services required by the franchise at the time the franchise was granted will be maintained notwithstanding the elimination or modification of the requirement;

"(2) DEFINITION.—In this subsection, the term 'commercial impracticability' means that it is commercially impracticable for the operator to comply with the requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based.

"(c) DEEMED ELIMINATION OR MODIFICATION.—Except in the case of a request for the elimination or modification of a requirement for services relating to public, educational, or governmental access, if the franchising authority fails to approve or deny the request submitted under subsection (a) by the date described under subsection (b), the requirement shall be deemed eliminated or modified in accordance with the request on the day after such date.

"(d) APPEAL.—

"(1) IN GENERAL.—Any cable operator whose request for elimination or modification of a requirement in a franchise under subsection (a) has been denied by a final decision of a franchising authority may seek judicial review of the decision pursuant to the provisions of section 635.

"(2) GRANT OF REQUEST.—In the case of any proposed elimination or modification of a requirement in a franchise under subsection (a), the court shall grant such elimination or modification only if the cable operator demonstrates to the court that the standards in subsection (b) have been met.

"(e) WHEN REQUEST CONSIDERED SUBMITTED.—For the purposes of this section, a request to a franchising authority shall be considered submitted on the date on which the requesting party takes the first procedural step within the control of the requesting party—

"(1) to submit such request in accordance with the procedures established by the franchising authority for the review and approval of such a request; or

"(2) in the case of a franchising authority that has not established specific procedures for the review and approval of such a request, to submit to the franchising authority the type of filing that is typically required to initiate a standard review for a request related to a franchise.".

(b) IN GENERAL.—Section 626 of the Communications Act of 1934 (47 U.S.C. 546) is amended to read as follows:

"SEC. 626. FRANCHISE TERM AND TERMINATION.

"(a) FRANCHISE TERM.—A franchise shall continue in effect (without any requirement for renewal) until the date on which the franchise is revoked or terminated in accordance with subsection (b).

"(b) LIMITS.—

"(1) PROHIBITION AGAINST REVOCATION; TERMINATION.—Except as provided in paragraph (2), a franchise may not be—

"(A) revoked by a franchising authority;

"(B) terminated by a cable operator; or

"(C) revoked or terminated by operation of law, including by a term in a franchise that revokes or terminates such franchise on a specific date, after a period of time, or upon the occurrence of an event.

"(2) WHEN TERMINATION OR REVOCATION OF FRANCHISE PERMITTED.—

"(A) TERMINATION BY CABLE OPERATOR.—

"(i) IN GENERAL.—A cable operator may terminate a franchise by submitting to the franchising authority a written request for the franchising authority to revoke such franchise.

"(ii) TIME OF REVOCATION.—If the cable operator submits a written request under clause (i), the franchising authority shall revoke the franchise on the date that is 90 days after the request is submitted to the franchising authority.

"(iii) DEEMED TO BE REVOKED.—If a franchising authority does not approve a request by the date required under clause (ii), the franchise is deemed revoked on the day after such date.

"(B) TERMINATION BY FRANCHISING AUTHORITY.—A franchising authority may revoke a franchise if the franchising authority—

"(i) finds that the cable operator has knowingly and willfully failed to substantially meet a material requirement imposed by the franchise;

"(ii) provides the cable operator a reasonable opportunity to cure such failure, after which the cable operator fails to cure such failure; and

"(iii) does not waive the material requirement or acquiesce with the failure to substantially meet such requirement.

"(c) REVIEW OF REVOCATION OF FRANCHISE BY FRANCHISING AUTHORITY.—

"(1) ADMINISTRATIVE OR JUDICIAL REVIEW.—With respect to a determination by a franchising authority to revoke a franchise under subsection (b)(2)(B), a cable operator may—

"(A) petition the Commission for review of such determination; or

"(B) seek judicial review of such determination pursuant to the provisions of section 635.

"(2) COMMISSION REVIEW.—With respect to a petition for the review of a determination brought under paragraph (1)(A), the Commission shall—

"(A) review the determination de novo; and

"(B) invalidate the determination if, based on the evidence presented during the review, the Commission determines that the franchising authority has not demonstrated by a preponderance of the evidence that the franchising authority revoked the franchise in accordance with subsection (b)(2)(B).

"(3) STAY OF DETERMINATION TO REVOKE FRANCHISE.—A revocation of a franchise under subsection (b)(2)(B) may be stayed—

"(A) in the case the cable operator petitions the Commission for review of the determination on which such revocation is based, by the Commission; and

"(B) in the case the cable operator seeks judicial review of the determination on which such revocation is based, by the court in which the cable operator seeks judicial review of the determination.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 601—

(A) in paragraph (4), by striking the semicolon at the end and inserting "; and";

(B) by striking paragraph (5); and

(C) by redesignating paragraph (6) as paragraph (5);

(2) in section 602(9)—

(A) by striking "initial"; and

(B) by striking ", or renewal thereof (including a renewal of an authorization which has been granted subject to section 626),";

(3) in section 611(b), by striking "and may require as part of a cable operator's proposal for a franchise renewal, subject to section 626,";

(4) in section 612(b)(3)—

(A) by striking "or as part of a proposal for renewal, subject to section 626,"; and

(B) by striking ", or proposal for renewal thereof,";

(5) in section 621(b)(3)—

(A) in subparagraph (C)(ii), by striking "or franchise renewal"; and

(B) in subparagraph (D)—

(i) by striking "initial"; and

(ii) by striking ", a franchise renewal,";

(6) in section 624—

(A) in subsection (b)(1), by striking "(including requests for renewal proposals, subject to section 626)"; and

(B) in subsection (d)(1), by striking "or renewal thereof";

(7) in section 635A(a), by striking "renewal,".

(d) EFFECTIVE DATE; APPLICATION.—

(1) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect 6 months after the date of the enactment of this Act.

(2) APPLICATION.—This section, and the amendments made by this section, shall apply to a franchise granted—

(A) on or after the effective date established by paragraph (1); or

(B) before such date, if—

(i) such franchise (including, any renewal thereof before the date of the enactment of this Act) is in effect on such date; or

(ii) such franchise is expired and the cable operator has continued to perform under the provisions of such franchise as if such franchise were not expired.

SEC. 204. SALES OF CABLE SYSTEMS.

(a) IN GENERAL.—Section 627 of the Communications Act of 1934 (47 U.S.C. 547) is amended to read as follows:

"SEC. 627. CONDITIONS OF SALE OR TRANSFER.

"(a) VALUE OF CABLE SYSTEM AFTER REVOCATION OF FRANCHISE.—If a franchise held by a cable operator is revoked under section 626(b)(2)(B) and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at fair market value.

"(b) LIMITATIONS ON AUTHORITY OF FRANCHISING AUTHORITY WITH RESPECT TO TRANSFER OF FRANCHISE.—

"(1) IN GENERAL.—A franchising authority may not preclude a cable operator from transferring a franchise to any person—

"(A) to which such franchise was not initially granted; and

"(B) with respect to the terms of the franchise that apply to the cable operator, who agrees to accept all such terms in effect at the time of the transfer.

"(2) NOTIFICATION.—In the case of the transfer of a franchise to a person to which such franchise was not originally granted, a franchising authority may require a cable operator to which a franchise was initially granted to, not later than 15 days before the transfer of the franchise, notify the franchising authority in writing of such transfer.

"(3) TRANSFER OF A FRANCHISE DEFINED.—In this subsection, the term 'transfer of a franchise' means the transfer or assignment of any rights under a franchise through any transaction, including through—

"(A) a merger involving the cable operator or cable system;

"(B) a sale of the cable operator or cable system;

"(C) an assignment of the cable operator or a cable system;

"(D) a restructuring of a cable operator or a cable system; or

"(E) the transfer of control of a cable operator or a cable system.".

(b) EFFECTIVE DATE.—This section, and the amendment made by subsection (a), shall take effect 6 months after the date of the enactment of this Act.

(c) APPLICATION.—This section, and the amendment made by subsection (a), shall apply to a franchise granted—

(1) on or after the effective date established by subsection (b); or

(2) before such date, if—

(A) such franchise (including any renewal term thereof) is in effect on such date; or

(B) such franchise is expired and cable operator has continued to perform under the provisions of such franchise as if such franchise were not expired.

TITLE III—ENVIRONMENTAL AND HISTORIC PRESERVATION REVIEWS

SEC. 301. APPLICATION OF NEPA AND NHPA TO CERTAIN COMMUNICATIONS PROJECTS.

(a) IN GENERAL.—

(1) NEPA EXEMPTION.—A Federal authorization with respect to a covered project may not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(2) NATIONAL HISTORIC PRESERVATION ACT EXEMPTION.—A covered project may not be considered an undertaking under section 300320 of title 54, United States Code.

(b) GRANT OF EASEMENT ON FEDERAL PROPERTY.—

(1) NEPA EXEMPTION.—A Federal authorization with respect to a covered easement for a communications facility may not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), if—

(A) a covered easement has previously been granted for another communications facility or a utility facility with respect to the same building or other property owned by the Federal Government; or

(B) the covered easement is for a communications facility in a public right-of-way.

(2) NATIONAL HISTORIC PRESERVATION ACT EXEMPTION.—A covered easement for a communications facility may not be considered an undertaking under section 300320 of title 54, United States Code, if—

(A) a covered easement has previously been granted for another communications facility or a utility facility with respect to the same building or other property owned by the Federal Government; or

(B) the covered easement is for a communications facility in a public right-of-way.

(c) REQUESTS FOR MODIFICATION OF CERTAIN EXISTING WIRELESS AND TELECOMMUNICATIONS SERVICE FACILITIES.—Section 6409(a)(3) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455(a)(3)) is amended to read as follows:

"(3) APPLICATION OF NEPA; NHPA.—

"(A) NEPA EXEMPTION.—A Federal authorization with respect to an eligible facilities request or an eligible telecommunications facilities request may not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

"(B) NATIONAL HISTORIC PRESERVATION ACT EXEMPTION.—An eligible facilities request or an eligible telecommunications facilities request may not be considered an undertaking under section 300320 of title 54, United States Code.

"(C) FEDERAL AUTHORIZATION DEFINED.—In this paragraph, the term 'Federal authorization'—

"(i) means any authorization required under Federal law with respect to an eligible facilities request or an eligible telecommunications facilities request; and

"(ii) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law with respect to an eligible facilities request or an eligible telecommunications facilities request.".

SEC. 302. PRESUMPTION WITH RESPECT TO CERTAIN COMPLETE FCC FORMS.

(a) PRESUMPTION.—If an Indian Tribe is shown to have received a complete FCC Form 620 or FCC Form 621 (or any successor form), or can be reasonably expected to have received a complete FCC Form 620 or FCC Form 621 (or any successor form), and has not acted on a request contained in such complete form by the date that is 45 days after the date of such receipt or reasonably expected receipt—

(1) the Commission and a court of competent jurisdiction (as the case may be) shall presume the applicant with respect to such complete form has made a good faith effort to provide the information reasonably necessary for such Indian Tribe to ascertain whether historic properties of religious or cultural significance to such Indian Tribe may be affected by the undertaking related to such complete form; and

(2) such Indian Tribe shall be presumed to have disclaimed interest in such undertaking.

(b) OVERCOMING PRESUMPTION.—

(1) IN GENERAL.—An Indian Tribe may overcome a presumption under subsection (a) upon making, to the Commission or a court of competent jurisdiction, a favorable demonstration with respect to 1 or more of the factors described in paragraph (2).

(2) FACTORS CONSIDERED.—In making a determination regarding a presumption under subsection (a), the Commission or court of competent jurisdiction shall give substantial weight to—

(A) whether the applicant with respect to the relevant complete form failed to make a reasonable attempt to follow up with the applicable Indian Tribe not earlier than 30 days, and not later than 50 days, after the applicant submitted a complete FCC Form 620 or FCC Form 621 (as the case may be) to such Indian Tribe; and

(B) whether the rules of the Commission, or FCC Form 620 or FCC Form 621, are found to be in violation of a Nationwide Programmatic Agreement of the Commission.

SEC. 303. RULE OF CONSTRUCTION.

Nothing in this title or any amendment made by this title may be construed to affect the obligation of the Commission to evaluate radiofrequency exposure under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

SEC. 304. DEFINITIONS.

In this title:

(1) CHIEF EXECUTIVE.—The term "Chief Executive" means the person who is the Chief, Chairman, Governor, President, or similar executive official of an Indian tribal government.

(2) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(3) COMMUNICATIONS FACILITY.—The term "communications facility" has the meaning given the term "communications facility installation" in section 6409(d) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455(d)).

(4) COVERED EASEMENT.—The term "covered easement" means an easement, right-of-way, or lease with respect to a building or other property owned by the Federal Government, excluding Tribal land held in trust by the Federal Government (unless the Indian tribal government with respect to such land requests that the Commission not exclude the land for purposes of this definition), for

the right to install, construct, modify, or maintain a communications facility or a utility facility.

(5) COVERED PROJECT.—The term "covered project" means any of the following:

(A) A project—

(i) for—

(I) the mounting or installation of a personal wireless service facility with another personal wireless service facility that exists at the time at which a request for authorization of such mounting or installation is submitted to a State or local government or instrumentality thereof or to an Indian tribal government; or

(II) the modification of a personal wireless service facility; and

(ii) for which a permit, license, or approval from the Commission is required or that is otherwise subject to the jurisdiction of the Commission.

(B) A project—

(i) for the placement, construction, or modification of a telecommunications service facility in or on eligible support infrastructure; and

(ii) for which a permit, license, or approval from the Commission is required or that is otherwise subject to the jurisdiction of the Commission.

(C) A project to deploy a small personal wireless service facility.

(D) A project—

(i) for the deployment or modification of a communications facility that is to be carried out entirely within a floodplain (as defined in section 9.4 of title 44, Code of Federal Regulations, as in effect on the date of the enactment of this Act); and

(ii) for which a permit, license, or approval from the Commission is required or that is otherwise subject to the jurisdiction of the Commission.

(E) A project—

(i) for the deployment or modification of a communications facility that is to be carried out entirely within a brownfield site (as defined in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)); and

(ii) for which a permit, license, or approval from the Commission is required or that is otherwise subject to the jurisdiction of the Commission.

(F) A project to permanently remove covered communications equipment or services (as defined in section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. 1608)) and to replace such covered communications equipment or services with communications equipment or services (as defined in such section) that are not covered communications equipment or services (as so defined).

(G) A project that—

(i) is to be carried out entirely within an area for which the President, the Governor of a State, or the Chief Executive of an Indian tribal government has declared a major disaster or an emergency;

(ii) is to be carried out not later than 5 years after the date on which the President, Governor, or Chief Executive made such declaration; and

(iii) replaces a communications facility damaged by such disaster or emergency or makes improvements to a communications facility in such area that could reasonably be considered as necessary for recovery from such disaster or emergency or to prevent or mitigate any future disaster or emergency.

(H) A project for the placement and installation of a new communications facility if—

(i) such new facility—

(I) will be located within a public right-of-way; and

(II) is not more than 50 feet tall or 10 feet taller than any existing structure in the public right-of-way, whichever is higher;

(ii) such new facility is—

(I) a replacement for an existing communications facility; and

(II) the same as, or substantially similar to (as such term is defined by the Commission), the existing communications facility that such new communications facility is replacing;

(iii) such new facility is a type of communications facility that—

(I) is described in section 6409(d)(1)(B) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455(d)(1)(B)); and

(II) meets the size limitation of a small antenna established by the Commission; or

(iv) the placement and installation of such new facility involves the expansion of the site of an existing communications facility not more than 30 feet in any direction.

(6) ELIGIBLE SUPPORT INFRASTRUCTURE.—The term "eligible support infrastructure" means infrastructure that supports or houses a facility for communication by wire (or that is designed for or capable of supporting or housing such a facility) at the time when a request to a State or local government or instrumentality thereof, or to an Indian tribal government, for authorization to place, construct, or modify a telecommunications service facility in or on the infrastructure is submitted to the government or instrumentality.

(7) EMERGENCY.—The term "emergency" means—

(A) in the case of an emergency declared by the President, an emergency declared by the President under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191); and

(B) in the case of an emergency declared by the Governor of a State or the Chief Executive of an Indian tribal government, any occasion or instance with respect to which the Governor or Chief Executive declares that an emergency exists (or makes a similar declaration) under State or Tribal law (as the case may be).

(8) FEDERAL AUTHORIZATION.—The term "Federal authorization"—

(A) means any authorization required under Federal law with respect to a covered project or a covered easement; and

(B) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law with respect to a covered project or a covered easement.

(9) GOVERNOR.—The term "Governor" means the chief executive of any State.

(10) INDIAN TRIBAL GOVERNMENT.—The term "Indian tribal government" means the governing body of an Indian Tribe.

(11) INDIAN TRIBE.—The term "Indian Tribe" has the meaning given the term "Indian tribe" under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130).

(12) MAJOR DISASTER.—The term "major disaster" means—

(A) in the case of a major disaster declared by the President, a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170); and

(B) in the case of a major disaster declared by the Governor of a State or the Chief Executive of an Indian tribal government, any occasion or instance with respect to which the Governor or Chief Executive declares that a disaster exists (or makes a similar declaration) under State or Tribal law (as the case may be).

(13) PERSONAL WIRELESS SERVICE FACILITY.—The term "personal wireless service facility" has the meaning given such term in subparagraph (F) of section 332(c)(7) of the Communications Act of 1934 (47 U.S.C. 332(c)(7)), as amended by this Act.

(14) PUBLIC RIGHT-OF-WAY.—The term "public right-of-way"—

(A) means—

(i) the area on, below, or above a public roadway, highway, street, sidewalk, alley, or similar property (whether currently or previously used in such manner); and

(ii) any land immediately adjacent to and contiguous with property described in clause (i) that is within the right-of-way grant; and

(B) does not include a portion of the Interstate System (as such term is defined in section 101(a) of title 23, United States Code).

(15) SMALL PERSONAL WIRELESS SERVICE FACILITY.—The term "small personal wireless service facility" means a personal wireless service facility in which each antenna is not more than 3 cubic feet in volume (excluding a wireline backhaul facility connected to such personal wireless service facility).

(16) STATE.—The term "State" means each State of the United States, the District of Columbia, and each territory or possession of the United States.

(17) TELECOMMUNICATIONS SERVICE.—The term "telecommunications service" has the meaning given such term in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(18) TELECOMMUNICATIONS SERVICE FACILITY.—The term "telecommunications service facility"—

(A) means a facility that is designed or used to provide or facilitate the provision of any interstate or intrastate telecommunications service; and

(B) includes a facility described in subparagraph (A) that is used to provide other services.

(19) UTILITY FACILITY.—The term "utility facility" means any privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, that directly or indirectly serves the public.

(20) WIRELINE BACKHAUL FACILITY.—The term "wireline backhaul facility" means an above-ground or underground wireline facility used to transport communications service or other electronic communications from a small personal wireless service facility or its adjacent network interface device to a communications network.

TITLE IV—OTHER MATTERS

SEC. 401. TIMELY CONSIDERATION OF APPLICATIONS FOR FEDERAL EASEMENTS, RIGHTS-OF-WAY, AND LEASES.

(a) IN GENERAL.—Section 6409(b)(3) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455(b)(3)) is amended—

(1) in subparagraph (A), by striking "an executive agency receives a duly filed application" and inserting "an application is submitted to an executive agency"; and

(2) by adding at the end the following:

"(E) DEEMED GRANTED.—If an executive agency fails to grant or deny an application under subparagraph (A) within the timeframe under such subparagraph, the application shall be deemed granted on the day after the last day of such timeframe.

"(F) TOLLING DUE TO INCOMPLETENESS.—

"(i) INITIAL APPLICATION INCOMPLETE.—If, not later than 30 days after the date on which an applicant submits to an executive agency an application under subparagraph (A), the executive agency provides to the applicant a written notice described in clause (iii) with respect to the application, the timeframe described in subparagraph (A) is tolled with respect to the application until the date on which the applicant submits to the executive agency a supplemental submission in response to the notice.

"(ii) SUPPLEMENTAL SUBMISSION INCOMPLETE.—If, not later than 10 days after the date on which an applicant submits to an executive agency a supplemental submission in response to a written notice described in clause (iii), the executive agency provides to the applicant a written notice described in clause (iii) with respect to the supplemental submission, the timeframe under subparagraph (A) is further tolled until the date on which the applicant submits to the executive agency a subsequent supplemental submission in response to the notice.

"(iii) WRITTEN NOTICE DESCRIBED.—The written notice described in this clause is, with respect to an application under subparagraph (A) or a supplemental submission described in clause (i) or (ii) submitted to an executive agency by an applicant, a written notice from the executive agency to the applicant—

"(I) stating that all of the information (including any form or other document) required by the executive agency to be submitted for the application to be considered complete has not been submitted;

"(II) identifying the information described in subclause (I) that was not submitted; and

"(III) including a citation to a specific provision of a publicly available rule, regulation, or standard issued by the executive agency requiring that such information be submitted with such an application.

"(iv) LIMITATION ON SUBSEQUENT WRITTEN NOTICE.—If a written notice provided by an executive agency to an applicant under clause (ii) with respect to a supplemental submission identifies as not having been submitted any information that was not identified as not having been submitted in the prior written notice under this subparagraph in response to which the supplemental submission was submitted, the subsequent written notice shall be treated as not having been provided to the applicant.

"(G) TOLLING BY MUTUAL AGREEMENT.—The timeframe under subparagraph (A) may be tolled by mutual agreement between the executive agency and the applicant.

"(H) WHEN APPLICATION CONSIDERED SUBMITTED.—For the purposes of this paragraph, an application shall be considered submitted to an executive agency on the date on which the applicant takes the first procedural step within the control of the applicant to submit such application in accordance with the procedures established by the executive agency for the review and approval of such an application.".

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply with respect to any application under subsection (b) of section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455) that is submitted (as determined under subsection (b)(3)(H) of such section) to an executive agency (as defined in subsection (d) of such section) on or after the date of the enactment of this Act.

SEC. 402. STREAMLINING OF CERTAIN FEES RELATING TO BROADBAND INFRASTRUCTURE DEPLOYED USING GRANT FUNDS UNDER BEAD PROGRAM.

Section 60102(e)(4) of the Infrastructure Investment and Jobs Act (47 U.S.C. 1702(e)(4)) is amended by adding at the end the following:

"(F) CERTIFICATION REGARDING STREAMLINING OF CERTAIN FEES RELATING TO BROADBAND INFRASTRUCTURE.—An eligible entity that submits a final proposal under this paragraph shall certify in such final proposal that any fee charged by the eligible entity, or any political subdivision of the eligible entity, to consider a request for authorization to place, construct, or modify, using (in whole or in part) grant funds received under this paragraph, infrastructure for the provision of broadband service, and any fee for use of a right-of-way or infrastructure in a right-of-way owned or managed by the entity or political subdivision for the placement, construction, or modification, using (in whole or in part) grant funds received under this paragraph, of infrastructure for the provision of broadband service, will be—

"(i) competitively neutral, technology neutral, and nondiscriminatory;

"(ii) established in advance and publicly disclosed;

"(iii) calculated—

"(I) based on actual and direct costs, such as costs for—

"(aa) review and processing of requests; and

"(bb) repairs and replacement of—

"(AA) components and materials directly resulting from and affected by the placement, construction, or modification (including the installation or improvement) of infrastructure for the provision of broadband service; or

"(BB) equipment that facilitates the placement, construction, or modification (including the installation or improvement) of such infrastructure; and

"(II) using, for purposes of subclause (I), only costs that are objectively reasonable; and

"(iv) described to a requesting party in a manner that distinguishes between—

"(I) nonrecurring fees and recurring fees; and

"(II) the use of infrastructure on which infrastructure for the provision of broadband service is already located and infrastructure on which there is no infrastructure for the provision of broadband service as of the date on which the request is submitted to the eligible entity or political subdivision.".

PURPOSE AND SUMMARY

H.R. 3557, the "American Broadband Deployment Act" would streamline the broadband permitting process at the federal, state, and local level. It would amend the Communications Act of 1934 by establishing predictable timeframes for state and local permitting processes related to broadband deployment. It would also cap fees state and local governments charge for permit application reviews and use of public rights-of-way, requiring that those fees be based on actual costs.

Additionally, H.R. 3557 would reform the cable franchising process. It would establish predictable timeframes for reviews of requests for new franchises and expansion of cable systems. It would

also clarify and make more transparent the terms for franchises and streamline the process for transferring cable systems.

H.R 3557 would also exempt certain broadband-deployment projects from environmental and historic preservation reviews and codify the Tribal notification process for new wireless infrastructure.

Finally, H.R 3557 would deem granted applications to deploy broadband on federal lands that remain pending beyond the existing 270-day timeframe for such reviews. It would also require states to certify that projects funded by grants from the Broadband Equity, Access, and Deployment (BEAD) program are charged cost-based fees from state and local governments.

BACKGROUND AND NEED FOR LEGISLATION

The United States faces a persistent digital divide. According to the Federal Communications Commission (FCC), approximately 8.3 million homes and businesses lack access to high-speed broadband.[1] The federal government has dedicated billions of dollars to address this need, most recently with $65 billion through the Infrastructure Investment and Jobs Act (IIJA) to support broadband deployment, digital equity, and affordability needs.[2]

The bulk of this money will be spent on broadband deployment. Before a broadband provider can begin deploying (or modifying) broadband infrastructure, however, it must secure zoning and construction permits, pay application fees, and conduct environmental and historic preservation reviews. This process often requires cooperation among providers, federal agencies, and state and local governments. But the unpredictable timelines for permit approvals and high fees for processing applications have made it more expensive and burdensome to deploy broadband infrastructure.[3] Streamlining these regulations is essential to encourage and expedite broadband infrastructure deployment throughout the United States, and ensure federal funding is not wasted due to unnecessary permitting delays or fees.

Federal Barriers

The federal government manages a significant amount of land and buildings across the country. As a result, federal agencies such as the Department of Interior, Department of Agriculture, and General Services Administration, are responsible for reviewing and approving applications to deploy broadband on federal property. These agencies, however, often take significant time to review

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[1] Jessica Rosenworcel, FCC, National Broadband Map: It Keeps Getting Better, https://www.fcc.gov/national-broadband-map-it-keeps-getting-better, (May 30, 2023); FCC National Broadband Map, https://broadbandmap.fcc.gov/home (last accessed June 23, 2023).

[2] Infrastructure Investment and Jobs Act, P.L. 117–58, div. F, tit. I § 60101 et seq. (2021).

[3] *Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment, Hearing before the Sub. on Commc'n. and Tech., H. Comm. on Energy and Commerce*, 118th Cong. (2023) ("Permitting Hearing") (Written Testimony of Michael O'Rielly at 3); *see, e.g.*, Streamlining Federal Siting Working Group Final Report, FCC Broadband Deployment Advisory Committee (Jan. 23–24, 2018), https://www.fcc.gov/sites/default/files/bdac-federalsiting-01232018.pdf (discussing Federal regulatory barriers to broadband deployment); Report Of The Removal of State and Local Regulatory Barriers Working Group, FCC Broadband Deployment Advisory Committee (Jan. 10, 2018), https://www.fcc.gov/sites/default/files/bdac-regulatorybarriers-01232018.pdf (discussing State and local barriers).

these applications, which results in project delays.[4] As one stakeholder testified, "[t]he existing federal permitting process takes too long, is too expensive, and is an impediment to the ability of broadband providers to meet the needs of their consumers and communities."[5] Problems include agencies not responding "for long stretches of time regarding the status of applications or what else might be needed to deem an application 'complete,'" followed by "serial requests for additional information that could have been caught earlier or avoided altogether with better guidance and communication upfront."[6] Agencies also lack coordination or similar application of rules even within the same agency.[7]

To address this, Congress directed federal agencies to develop one or more master contracts to govern the placement of broadband infrastructure on property owned by the federal government, use a common application form, and established a 270-day shot clock for federal agencies to process applications to place communications facilities on federal property.[8] Nonetheless, reviews often last beyond 270 days, as agencies find ways to avoid starting the shot clock,[9] and there is currently no penalty when federal agencies miss this deadline.[10]

Other federal laws, such as the National Historic Preservation Act (NHPA)[11] and the National Environmental Policy Act of 1969 (NEPA),[12] complicate broadband infrastructure deployment. NEPA requires federal agencies to identify and evaluate the environmental effects of proposed "major Federal actions,"[13] while NHPA requires agencies to consider the effects of federal undertakings on historic properties,[14] usually through consultation with an appropriate State Historic Preservation Officer or Tribal Historic Preservation Officer, and provide notification to Tribes that have expressed an interest in reviewing projects proposed in their designated areas of interest.[15] These two laws are generally read coextensively[16]—major federal actions under NEPA are usually considered federal undertakings under NHPA. Certain broadband projects, such as those involving federal lands or federal funds or those involving certain wireless facilities, fall into these categories. Providers are therefore required to conduct environmental and historic preservation reviews for these projects. These reviews can cost tens of thousands of dollars to complete and take years to obtain

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[4] *See* Linda Hardesty, Whoa—The Fiber Permitting Process Could Crush Digital Divide Dreams, Fierce Telecom (Dec. 9, 2021), https://www.fiercetelecom.com/broadband/whoa-fiber-permitting-process-could-crush-digital-divide-dreams (describing federal approvals needed to deploy broadband).

[5] Permitting Hearing (Written Testimony of Louis Finkel at 1).

[6] Permitting Hearing (Written Testimony of Michael Romano at 7).

[7] Permitting Hearing (Testimony of Louis Finkel).

[8] 47 U.S.C. § 1455(b)(3)(A).

[9] Permitting Hearing (Written Testimony of Michael Romano at 8).

[10] Permitting Hearing (Response of Michael Saperstein to The Hon. Jay Obernolte).

[11] 54 U.S.C. § 300101 *et seq*.

[12] 42 U.S.C. § 4321 *et seq*.

[13] 42 U.S.C. § 4332(2)(C); *see also* 40 CFR § 1508.18 (defining major Federal action).

[14] 54 U.S.C. § 306108; see also see also 54 U.S.C. § 300320(3); 36 CFR § 800.16(y) (defining undertaking).

[15] Tower and Antenna Siting, FCC, https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/tower-and-antenna-siting (June 29, 2022). https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/tower-and-antenna-siting#NHPA.

[16] *Sac and Fox Nation of Mo. v. Norton*, 240 F.3d 1250, 1263 (10th Cir. 2001) ("Because of the operational similarity between the two statutes, courts generally treat 'major federal actions' under the NEPA as closely analogous to 'federal undertakings' under the NHPA.").

approval,[17] thus delaying and increasing the cost of deployment.[18] Worse, these reviews can be required even on previously disturbed lands where a review previously took place.[19] Modernizing these processes would "give more certainty and predictability" to broadband providers seeking to deploy.[20]

The FCC has tried streamlining the NEPA/NHPA processes. In the *2018 NEPA/NHPA Order*, the FCC exempted construction of small-cell wireless facilities from NHPA and NEPA,[21] but the U.S. Court of Appeals for the District of Columbia Circuit vacated that action in August 2019.[22]

The FCC also addressed the Tribal notification process under its rules implementing NHPA.[23] The FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process directs a provider seeking to deploy a wireless tower to provide "all information reasonably necessary for [an] Indian Tribe or [Native Hawaiian Organization] to evaluate whether Historic Properties of religious and cultural significance may be affected" and provide the Tribe with a reasonable opportunity to respond.[24] The FCC's Forms 620 and 621 provide this information—Form 620 addresses new towers and Form 621 addresses collocations.

In the *2018 NEPA/NHPA Order*, the FCC required applicants to provide all potentially affected Tribes with a Form 620/621 and clarified the timeframe for Tribes to respond to the submission. The FCC established a 45-day process for moving forward with construction in cases in which the Tribe does not respond after having been given the opportunity to review a Form 620/621 submission.[25] If an applicant does not receive a response within 30 calendar days of the date the Tribe can be shown or may reasonably be expected to have received notification that the Form 620/621 submission, the applicant can refer the matter to the FCC for follow-up, and the FCC will inform the Tribe that it has 15 calendar days to respond. If the Tribe still does not respond, the applicant's pre-construction obligations are discharged with respect to that Tribe. The FCC also determined that "the detailed information included in the Form 620/621 submission packet constitutes a reasonable and good faith effort to provide the information reasonably necessary for [Tribes] to ascertain whether historic properties of religious and cultural significance to them may be affected by the undertaking."[26]

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[17] Permitting Hearing (Written Testimony of Michael Romano at 5).
[18] *Id.* (Written Testimony of Louis Finkel at 1).
[19] *Id.* (Written Testimony of Louis Finkel at 2).
[20] *Id.* (Written Testimony of Louis Finkel at 1).
[21] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17–79, Second Report, Second Report and Order, 33 FCC Rcd 3102 (2018) (*2018 NEPA/NHPA Order*).
[22] *United Keetoowah Band of Cherokee Indians in Oklahoma v. FCC*, 933 F.3d 728 (D.C. Cir. 2019) (vacating an FCC order eliminating NEPA and NHPA requirements as arbitrary and capricious for failing to justify that public interest did not require review of small cell deployments).
[23] *2018 NEPA/NHPA Order* ¶ ¶ 104-113.
[24] Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, 47 C.F.R. pt.1, Appx. C § IV.F.
[25] *2018 NEPA/NHPA Order* ¶ 111.
[26] *Id.* ¶ 106.

State and Local Obstacles

State and local governments play a key role in facilitating or obstructing broadband infrastructure deployment. They regulate land use, review siting applications, and issue relevant permits. State and local franchising authorities also approve whether cable operators can provide service in a region and impose other regulations related to their provision of service.

State and local governments' review processes can be cumbersome and costly,[27] which can delay or even prohibit broadband deployment. For example, some state and local governments charge excessive fees for reviewing applications or to access the public rights-of-way for construction and impose no deadlines to review applications.[28] One provider reported that a government charged "fees amounting to over $125 per subscriber and with no clear tie to the costs incurred by the state in processing the application or arising out of the use of the right-of-way."[29]

Federal law preempts state and local authority to regulate communications facilities. Under Section 253 of the Communications Act of 1934, "no State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[30] Section 253 requires the Commission to preempt the enforcement of any such law.[31] Similarly, Section 332(c)(7) of the Communications Act states that "[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services."[32] It further requires a State or local government or instrumentality thereof to "act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed."[33] Finally, under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."[34]

The FCC has used its authority to address state and local barriers to broadband infrastructure deployment. In 2009, the Commission adopted an interpretation of "reasonable period of time" under Section 332 to be 90 days for reviews of collocation applications and 150 days for reviews of siting applications other than collocations.[35]

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[27] Permitting Hearing (Written Testimony of Michael O'Rielly at 5).

[28] *See, generally, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17–79, WC Docket No. 17–84, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088 (2018).

[29] Permitting Hearing (Written Testimony of Michael Romano at 5).

[30] 47 U.S.C. § 253(a).

[31] *Id.* § 253(d).

[32] *Id.* § 332(c)(7)(B)(i).

[33] *Id.* § 332(c)(7)(B)(ii).

[34] Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112–96, tit. VI, sub. D § 6409(a) *codified at* 47 U.S.C. § 1455(a).

[35] *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994 ¶ 56 (2009), *aff'd, City of Arlington v. FCC*, 569 U.S. 290 (2013).

In 2014, the FCC adopted a Report and Order implementing Section 6409 that gave State and local governments 60 days to approve eligible facilities requests to modify existing wireless facilities.[36]

In 2018, the FCC codified the timelines for reviews it adopted in 2009 in a new Declaratory Ruling and Report and Order.[37] That item also streamlined state and local government review of wireless small-cell siting applications by limiting application fees that state and local governments could charge an applicant to be based on cost, establishing new shot clocks for small wireless facilities, and adopting new remedies for failing to act within the shot-clock. The U.S. Court of Appeals for the Ninth Circuit upheld this action after a challenge from a number of local governments.[38]

In 2018, the FCC also issued a Declaratory Ruling declaring that state and local moratoria on the deployment of telecommunications services or facilities prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.[39] Thus, state and local governments cannot ban the deployment of telecommunications services or facilities or enact de facto bans, such as blanket refusals to process applications, refusals to issue permits for a category of structures, or frequent and lengthy delays.

In 2020, the FCC adopted a Declaratory Ruling on state and local government review of modifications to existing wireless infrastructure to facilitate 5G deployment.[40] The item clarified when the 60-day shot clock for local review begins, how certain aspects of proposed modifications affect eligibility for streamlined review, and when FCC applicants need to submit environmental assessments based only on potential impacts to historic properties.[41] A number of municipalities are challenging this item in the U.S. Court of Appeals for the Ninth Circuit.[42]

Although these FCC actions have helped accelerate broadband infrastructure deployment, the litigation surrounding these rules and the risk that they could change with new administrations underscores the need for codification.[43]

COMMITTEE ACTION

On April 19, 2023, the Subcommittee on Communications and Technology held a hearing entitled, "Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment." The Subcommittee received testimony from:

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[36] *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report & Order, 29 FCC Rcd 12865, 12966 ¶¶ 243, 270, (2014) (*2014 Wireless Infrastructure Order*), *aff'd, Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015); 47 C.F.R. § 1.6100.

[37] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17–79, WC Docket No. 17–84, Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088 ¶¶ 138-39 (2018) (*2018 Small Cell Order*); 47 C.F.R. § 1.6003.

[38] *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020).

[39] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17–84, WT Docket No. 17–79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd. 7705 ¶ 140 (2018); 47 U.S.C. § 253.

[40] *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5977 ¶¶ 14–23 (2020) (*5G Upgrade Order*).

[41] *Id.*

[42] *League of Calif. Cities, et al.* v. *FCC, et al.*, No. 20-71765 (9th Cir., filed June 22, 2020).

[43] Permitting Hearing (Testimony of Michael Saperstein).

- Michael Romano, Executive Vice President, NTCA—The Rural Broadband Association;
- Michael Saperstein, Senior Vice President of Government Affairs and Chief Strategy Officer, Wireless Infrastructure Association;
- Michael O'Rielly, President, MPORielly Consulting, LLC;
- Louis Finkel, Senior Vice President of Government Relations, National Rural Electric Cooperative Association; and,
- Ernesto Falcon, Senior Legislative Counsel, Electronic Frontier Foundation.

On May 17, 2023, the Subcommittee on Communications and Technology met in open markup session and forwarded H.R. 3291, as amended, to the full Committee by a record vote of 16 yeas and 12 nays. That text became the base for H.R. 3557, which was introduced by Rep. Earl L. "Buddy" Carter (GA–01) on May 22, 2023.

On May 24, 2023, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 3557, as amended, favorably reported to the House by a record vote of 27 yeas and 23 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 14

BILL: H.R. 3557, the American Broadband Deployment Act of 2023

AMENDMENT: An amendment (DEEMED_01) to the Amendment in the Nature of a Substitute, offered by Rep. Pallone, to strike the deemed granted provisions throughout the text.

DISPOSITION: NOT AGREED TO, by a roll call vote of 22 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Burgess		X		Rep. Pallone	X		
Rep. Latta		X		Rep. Eshoo	X		
Rep. Guthrie		X		Rep. DeGette	X		
Rep. Griffith		X		Rep. Schakowsky			
Rep. Bilirakis		X		Rep. Matsui	X		
Rep. Johnson		X		Rep. Castor	X		
Rep. Bucshon		X		Rep. Sarbanes	X		
Rep. Hudson		X		Rep. Tonko	X		
Rep. Walberg		X		Rep. Clarke	X		
Rep. Carter		X		Rep. Cárdenas	X		
Rep. Duncan		X		Rep. Ruiz	X		
Rep. Palmer		X		Rep. Peters	X		
Rep. Dunn		X		Rep. Dingell	X		
Rep. Curtis		X		Rep. Veasey	X		
Rep. Lesko		X		Rep. Kuster	X		
Rep. Pence		X		Rep. Kelly	X		
Rep. Crenshaw		X		Rep. Barragán	X		
Rep. Joyce		X		Rep. Blunt Rochester	X		
Rep. Armstrong		X		Rep. Soto	X		
Rep. Weber		X		Rep. Craig	X		
Rep. Allen		X		Rep. Schrier	X		
Rep. Balderson		X		Rep. Trahan	X		
Rep. Fulcher		X		Rep. Fletcher	X		
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks		X					
Rep. Cammack		X					
Rep. Obernolte							
Rep. Rodgers		X					

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COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 15

BILL: H.R. 3557, the American Broadband Deployment Act of 2023

AMENDMENT: An amendment (D_FC_AMDT_03) to the Amendment in the Nature of a Substitute, offered by Rep. Dingell, to strike the National Environmental Policy Act exemptions from Title III.

DISPOSITION: NOT AGREED TO, by a roll call vote of 22 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Burgess		X		Rep. Pallone	X		
Rep. Latta		X		Rep. Eshoo	X		
Rep. Guthrie		X		Rep. DeGette	X		
Rep. Griffith		X		Rep. Schakowsky			
Rep. Bilirakis		X		Rep. Matsui	X		
Rep. Johnson		X		Rep. Castor	X		
Rep. Bucshon		X		Rep. Sarbanes	X		
Rep. Hudson				Rep. Tonko	X		
Rep. Walberg		X		Rep. Clarke	X		
Rep. Carter		X		Rep. Cárdenas	X		
Rep. Duncan		X		Rep. Ruiz	X		
Rep. Palmer		X		Rep. Peters	X		
Rep. Dunn		X		Rep. Dingell	X		
Rep. Curtis		X		Rep. Veasey	X		
Rep. Lesko		X		Rep. Kuster	X		
Rep. Pence		X		Rep. Kelly	X		
Rep. Crenshaw		X		Rep. Barragán	X		
Rep. Joyce		X		Rep. Blunt Rochester	X		
Rep. Armstrong		X		Rep. Soto	X		
Rep. Weber		X		Rep. Craig	X		
Rep. Allen		X		Rep. Schrier	X		
Rep. Balderson		X		Rep. Trahan	X		
Rep. Fulcher		X		Rep. Fletcher	X		
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks		X					
Rep. Cammack		X					
Rep. Obernolte							
Rep. Rodgers		X					

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COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 16

BILL: H.R. 3557, the American Broadband Deployment Act of 2023

AMENDMENT: An amendment (D_FC_AMDT_02) to the Amendment in the Nature, offered by Rep. Tonko, to strike the National Historic Preservation Act exemptions from Title III.

DISPOSITION: NOT AGREED TO, by a roll call vote of 22 yeas to 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Burgess		X		Rep. Pallone	X		
Rep. Latta		X		Rep. Eshoo	X		
Rep. Guthrie		X		Rep. DeGette	X		
Rep. Griffith		X		Rep. Schakowsky			
Rep. Bilirakis		X		Rep. Matsui	X		
Rep. Johnson		X		Rep. Castor	X		
Rep. Bucshon		X		Rep. Sarbanes	X		
Rep. Hudson				Rep. Tonko	X		
Rep. Walberg		X		Rep. Clarke	X		
Rep. Carter		X		Rep. Cárdenas	X		
Rep. Duncan		X		Rep. Ruiz	X		
Rep. Palmer		X		Rep. Peters	X		
Rep. Dunn		X		Rep. Dingell	X		
Rep. Curtis		X		Rep. Veasey	X		
Rep. Lesko		X		Rep. Kuster	X		
Rep. Pence		X		Rep. Kelly	X		
Rep. Crenshaw		X		Rep. Barragán	X		
Rep. Joyce		X		Rep. Blunt Rochester	X		
Rep. Armstrong		X		Rep. Soto	X		
Rep. Weber		X		Rep. Craig	X		
Rep. Allen		X		Rep. Schrier	X		
Rep. Balderson		X		Rep. Trahan	X		
Rep. Fulcher		X		Rep. Fletcher	X		
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks		X					
Rep. Cammack		X					
Rep. Obernolte							
Rep. Rodgers		X					

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COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 17

BILL: H.R. 3557, the American Broadband Deployment Act of 2023

AMENDMENT: An amendment (FEES_01) to the Amendment in the Nature of a Substitute, offered by Rep. Matsui, to allow fees collected by an executive agency to review an application to deploy broadband on federal property to be available to the agency, without further appropriation, for the operational costs of processing such applications.

DISPOSITION: NOT AGREED TO, by a roll call vote of 23 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Burgess		X		Rep. Pallone	X		
Rep. Latta		X		Rep. Eshoo	X		
Rep. Guthrie		X		Rep. DeGette	X		
Rep. Griffith		X		Rep. Schakowsky	X		
Rep. Bilirakis				Rep. Matsui	X		
Rep. Johnson		X		Rep. Castor	X		
Rep. Bucshon		X		Rep. Sarbanes	X		
Rep. Hudson				Rep. Tonko	X		
Rep. Walberg		X		Rep. Clarke	X		
Rep. Carter		X		Rep. Cárdenas	X		
Rep. Duncan		X		Rep. Ruiz	X		
Rep. Palmer		X		Rep. Peters	X		
Rep. Dunn		X		Rep. Dingell	X		
Rep. Curtis		X		Rep. Veasey	X		
Rep. Lesko		X		Rep. Kuster	X		
Rep. Pence		X		Rep. Kelly	X		
Rep. Crenshaw		X		Rep. Barragán	X		
Rep. Joyce		X		Rep. Blunt Rochester	X		
Rep. Armstrong		X		Rep. Soto	X		
Rep. Weber		X		Rep. Craig	X		
Rep. Allen		X		Rep. Schrier	X		
Rep. Balderson		X		Rep. Trahan	X		
Rep. Fulcher		X		Rep. Fletcher	X		
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks		X					
Rep. Cammack		X					
Rep. Obernolte							
Rep. Rodgers		X					

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COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 18

BILL: H.R. 3557, the American Broadband Deployment Act of 2023

AMENDMENT: An amendment (Presumption_01) to the Amendment in the Nature of a Substitute, offered by Rep. Ruiz, to strike section 302.

DISPOSITION: NOT AGREED TO, by a roll call vote of 23 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Burgess		X		Rep. Pallone	X		
Rep. Latta		X		Rep. Eshoo	X		
Rep. Guthrie		X		Rep. DeGette	X		
Rep. Griffith		X		Rep. Schakowsky	X		
Rep. Bilirakis		X		Rep. Matsui	X		
Rep. Johnson		X		Rep. Castor	X		
Rep. Bucshon		X		Rep. Sarbanes	X		
Rep. Hudson				Rep. Tonko	X		
Rep. Walberg		X		Rep. Clarke	X		
Rep. Carter		X		Rep. Cárdenas	X		
Rep. Duncan		X		Rep. Ruiz	X		
Rep. Palmer		X		Rep. Peters	X		
Rep. Dunn		X		Rep. Dingell	X		
Rep. Curtis		X		Rep. Veasey	X		
Rep. Lesko		X		Rep. Kuster	X		
Rep. Pence		X		Rep. Kelly	X		
Rep. Crenshaw				Rep. Barragán	X		
Rep. Joyce		X		Rep. Blunt Rochester	X		
Rep. Armstrong		X		Rep. Soto	X		
Rep. Weber		X		Rep. Craig	X		
Rep. Allen		X		Rep. Schrier	X		
Rep. Balderson		X		Rep. Trahan	X		
Rep. Fulcher		X		Rep. Fletcher	X		
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks		X					
Rep. Cammack		X					
Rep. Obernolte							
Rep. Rodgers		X					

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COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 19

BILL: H.R. 3557, the American Broadband Deployment Act of 2023

AMENDMENT: A motion by Rep. Rodgers to order H.R. 3557 favorably reported to the full House, as amended (Final Passage).

DISPOSITION: AGREED TO, by a roll call vote of 27 yeas to 23 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Burgess	X			Rep. Pallone		X	
Rep. Latta	X			Rep. Eshoo		X	
Rep. Guthrie	X			Rep. DeGette		X	
Rep. Griffith	X			Rep. Schakowsky		X	
Rep. Bilirakis	X			Rep. Matsui		X	
Rep. Johnson	X			Rep. Castor		X	
Rep. Bucshon	X			Rep. Sarbanes		X	
Rep. Hudson				Rep. Tonko		X	
Rep. Walberg	X			Rep. Clarke		X	
Rep. Carter	X			Rep. Cárdenas		X	
Rep. Duncan	X			Rep. Ruiz		X	
Rep. Palmer	X			Rep. Peters		X	
Rep. Dunn	X			Rep. Dingell		X	
Rep. Curtis	X			Rep. Veasey		X	
Rep. Lesko	X			Rep. Kuster		X	
Rep. Pence	X			Rep. Kelly		X	
Rep. Crenshaw	X			Rep. Barragán		X	
Rep. Joyce	X			Rep. Blunt Rochester		X	
Rep. Armstrong	X			Rep. Soto		X	
Rep. Weber	X			Rep. Craig		X	
Rep. Allen	X			Rep. Schrier		X	
Rep. Balderson	X			Rep. Trahan		X	
Rep. Fulcher	X			Rep. Fletcher		X	
Rep. Pfluger	X						
Rep. Harshbarger	X						
Rep. Miller-Meeks	X						
Rep. Cammack	X						
Rep. Obernolte							
Rep. Rodgers	X						

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OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held a hearing and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 3557 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Section 402 of the Congressional Budget Act of 1974 was not available.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to Section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to expedite broadband deployment by streamlining the permitting process at the federal, state, and local level.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 3557 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to Section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

RELATED COMMITTEE AND SUBCOMMITTEE HEARINGS

Pursuant to clause 3(c)(6) of rule XIII, the following related hearing was used to develop or consider H.R. 3557:

- On April 19, 2023, the Subcommittee on Communications and Technology held a hearing. The title of the hearing was "Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment." The Subcommittee received testimony to develop H.R. 3557 from:
  - Michael Romano, Executive Vice President, NTCA—The Rural Broadband Association;
  - Michael Saperstein, Senior Vice President of Government Affairs and Chief Strategy Officer, Wireless Infrastructure Association;
  - Michael O'Rielly, President, MPORielly Consulting, LLC;
  - Louis Finkel, Senior Vice President of Government Relations, National Rural Electric Cooperative Association; and,

○ Ernesto Falcon, Senior Legislative Counsel, Electronic Frontier Foundation.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 3557 contains no earmarks, limited tax benefits, or limited tariff benefits.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of Section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of Section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

This Section designates that the short title may be cited as the "American Broadband Deployment Act of 2023." It also includes the table of contents for this legislation.

Section 101. Preservation of local zoning authority

Section 101 would amend Section 332(c) of the Communications Act of 1934 (47 U.S.C. 332(c)) by striking paragraph (7) and inserting a new paragraph (7). The amended subparagraph (7)(A) would provide that nothing in paragraph (7) shall limit or affect the authority of a State or local government or instrumentality over decisions regarding placement, construction, or modification of personal wireless service facilities.

Subparagraph (B) would limit the general authority of subparagraph (A). Clause (i) would limit the ability of any State or local government or instrumentality thereof to discriminate among personal wireless service facilities or providers of communications services, and to prohibit or have the effect of prohibiting the provision, improvement, or enhancement of personal wireless services. The "prohibit or have the effect of prohibiting" language matches existing language in Section 332(c)(7), and the Committee intends this language to be interpreted in the same way, specifically adopting the "materially inhibit" standard used in the FCC's 1997 *California Payphone* decision.[44]

[44] *California Payphone Ass'n,* 12 FCC Rcd 14191 ¶ 31 (1997).

Clause (ii) would state that it is not a violation of clause (i) for a State or local government or instrumentality to establish structural engineering standards, safety requirements, or aesthetic requirements for personal wireless service facilities as long as those requirements are objective, reasonable, and nondiscriminatory. Regulations on safety requirements are subject to clause (vi), which would limit the ability for a State or local government to regulate personal wireless service facilities on the basis of the environmental effects of radio frequency, and aesthetic requirements could not prohibit or have the effect of prohibiting personal wireless facilities.

Clause (iii) would establish the timeframes for reviewing a request for authorization to place, construct, or modify a personal wireless service facility. Subclause (I) would provide the timeframes within which a State or local government shall grant or deny a request for authorization to place, construct, or modify a personal wireless service facility:

- 90 days for a request to collocate a facility that is not a small personal wireless facility (small cell) on an existing structure;
- 150 days for a request to deploy a non-small cell facility on a new structure;
- 60 days for a request to collocate a small cell on an existing structure; and
- 90 days for a request to deploy a small cell on a new structure.

Subclause (II) would provide that the timeframe to review requests that are submitted in a batch would be the longest timeframe under subclause (I) that would be applicable to any request in the batch. The timeframes and batching requirements in subclauses (I) and (II) are consistent with current FCC rules.[45]

Subclause (III) would apply the timeframes under subclause (I) to all proceedings required by a State or local government for approval of the request. Subclause (IV) would prohibit a State or local government from tolling the timeframes under subclause (I) by placing a moratorium, whether express or de facto, on the submission, acceptance, or consideration of any request.

Subclause (V) would address the tolling of the timeframes due to the initial incompleteness of requests. Like subclause (I), the requirements differ between small personal wireless services facilities and other personal wireless service facilities. Further, the subclause defines supplemental submissions to provide missing information, written notice requirements for incomplete requests, and limitations on subsequent written notices. Subclause (VI) would allow the State or local government and the requesting party to toll the timeframe by mutual agreement.

Clause (iv) would deem a request granted if the State or local government failed to take final action to grant or deny a request within the timeframes established under clause (iii). This clause also contains a rule of construction stating that a request deemed granted shall be authorized without further action by the government or instrumentality.

[45] 47 C.F.R. §1.6003(c).

Clause (v) would outline the requirements for denial of a request. A denial would need to be in writing, supported by substantial evidence contained in a written record, and publicly released and provided to the requesting party on the same day the decision is made.

Clause (vi) would prohibit a State or local government from regulating the operation, placement, construction, or modification of personal wireless service facilities on the basis of the environmental effects of radio frequency.

Clause (vii) would address how a State or local government may charge fees for the consideration of a request or use of a right-of-way or facility in a right-of-way owned or managed by the government. Fees must be competitively neutral, nondiscriminatory, established in advance, calculated based on actual and direct costs, and described to a requesting party in a way that distinguishes between various types of fees, including recurring and nonrecurring fees. As the FCC held in its *2018 Small Cell Order*, the Committee expects that only objectively reasonable costs may be factored into these fees.[46]

Subparagraph (C) would allow for any person adversely affected by any final action or failure to act by a State or local government to commence action in any court with competent jurisdiction. The same action may also be brought in front of the FCC.

Subparagraph (D) would specify when a request is considered to be submitted. A request would be considered submitted on the date on which the applicant takes the first procedural step within its control to submit the application in accordance with the procedures established by the government or instrumentality for the review and approval of such a request or for a standard review for a similar facility or structure.

Subparagraph (E) would establish a rule of construction stating that nothing in this paragraph may be construed to affect Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, relating to modifications of certain facilities. Subparagraph (F) contains the definitions Section for the new Section 332(c) paragraph (7).

Section 102. Removal of barriers to entry

This Section would amend Section 253 of the Communications Act of 1934 (47 U.S.C) by replacing the existing section with new language.

Subsection (a) of this new section would state that no State or local statute, or other regulations, may prohibit or have the effect of prohibiting the ability of any entity to provide, improve, or enhance the provision of an interstate or intrastate telecommunications service. As noted in Section 101, the use of the phrase "prohibit or have the effect of prohibiting" matches existing language, with the intent that it be interpreted consistent with the "materially inhibit" standard adopted in the FCC's *California Payphone* decision.

Subsection (b) would address the placement, construction, or modification of telecommunications service facilities. Paragraph (1) would provide that a state or local government may not discriminate among telecommunications service facilities based on tech-

[46] *2018 Small Cell Order* ¶ 50.

nology used or services provided, or against telecommunication service facilities as compared to the placement, construction, or modification of other facilities.

Paragraph (2) would specify the timeframes that State or local governments must abide by in processing permit requests. Like Section 101, this paragraph contains the specified timelines, applicability, and rules regarding tolling for incomplete requests or by mutual agreement. Here, a State or local government would have 90 days to review requests that use existing infrastructure and 150 days for all other requests. These timeframes would apply collectively to all proceedings required by the State or local government for the approval of the request and may be tolled for incompleteness or by mutual agreement. Further, the paragraph addresses supplemental submissions to provide missing information, written notice requirements, and limitations on subsequent written notices.

Paragraph (3) would deem a request granted if the request is not granted or denied within the timeframes established by paragraph (2), and paragraph (4) would require that a decision to deny a request would need to be in writing, supported by substantial evidence contained in a written record, and publicly released and provided to the requesting party on the same day the decision is made.

Paragraph (5) would address how a State or local government may charge fees for the consideration of a request or use of a right-of-way or facility in a right-of-way owned or managed by the government. As with Section 101, fees must be competitively neutral, nondiscriminatory, established in advance, calculated based on actual and direct costs, and described to a requesting party in a way that distinguishes between various types of fees, including recurring and nonrecurring fees. Once again, the Committee expects that only objectively reasonable costs to be factored into these fees.

Paragraph (6) would state that authorization by a State or local government to place, construct, or modify a telecommunications service facility in a right-of-way owned by that government is sufficient authorization to place, construct, or modify such a facility above or under a transportation crossing, such as a railroad crossing, intersecting that right-of-way. The paragraph would direct the FCC to coordinate with the Secretary of Transportation to promulgate regulations to implement this paragraph. These regulations would be implemented in manner that ensures safety; prevents interference with transportation crossings and related transportation operations; allows for the timely and efficient placement, construction, and modification of telecommunications service facilities; and establishes requirements and standards for just and reasonable compensation to private owners of transportation crossings, including compensation for costs related to the deployment of such facilities.

The Committee recognizes that a number of states, including Iowa, Nebraska, Minnesota, and Illinois, have enacted legislation addressing broadband (or utility) deployment through transportation crossings. It is the Committee's intent that these laws serve as a model for the Commission, especially on the actual, objectively reasonable costs that a railroad can charge, and the timeframe for reviewing crossing requests. The Committee also recognizes that railroad companies have developed their own processes and procedures for the safe deployment of broadband in their rights of way

and expects the FCC to account for these processes and procedures in developing rules.

Subsection (c) would allow for any person adversely affected by any final action or failure to act by a State or local government to commence action in any court with competent jurisdiction. This review must be done on an expedited basis and must commence within 30 days after final action or failure to act.

Subsection (d) would explicitly preserve the regulatory authority of States to impose competitively neutral and nondiscriminatory regulations to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Subsection (e) preserves the ability of State and local governments to manage, on a competitively neutral and nondiscriminatory basis, the public rights-of-way, and to require compensation for the use of such rights-of-way consistent with the requirements of subsection (b)(5).

Subsection (f) would allow the FCC to preempt a State or local government regulation or statute if, after notice and public comment, the Commission determines that the imposed statute, regulation, or legal requirement violates this section.

Subsection (g) would qualify that the new Section 253 shall not affect that application of Section 332(c)(3) to commercial mobile providers or Section 621 to cable operators.

Under subsection (h), it would not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service to rural areas to meet the requirements in Section 214(e)(1) for designation as an eligible telecommunications carrier. However, paragraph (1) and (2) would limit this exemption in a service area that has obtained an exemption, suspension, or modification of Section 251(c)(4), effectively preventing competitors from meeting the requirements of Section 214(e)(1), and for providers of commercial mobile services.

Subsection (i) would establish when a request is considered submitted. A request would be considered submitted on the date on which the applicant takes the first procedural step within its control to submit the application in accordance with the procedures established by the government or instrumentality for the review and approval of such a request or for a standard review for a similar facility or structure.

Subsection (j) contains the definitions section for the new Section 253.

Sec. 103. Requests for modification of certain existing wireless and telecommunications service facilities

Subsection (a)(1) would amend Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455) by striking the word "wireless" from the heading and inserting "communications". Subsection (a)(2)(A) would amend subsection (a) of Section 6409 to state that a State or local government or instrumentality thereof may not deny, and shall approve any:

- Eligible facilities request for the modification of an existing wireless tower, base station, eligible support structure, and
- Eligible telecommunications facility request for the modification of an existing telecommunications service facility in or

on eligible support infrastructure that does not substantially change the physical dimensions of the facility."Eligible support infrastructure" would be defined in new subsection (a)(7) of Section 6409 to mean infrastructure that supports or houses a telecommunications service facility at the time when an eligible telecommunications facilities request for a modification of such facility is submitted to a State or local government or instrumentality thereof. The Committee intends this to include poles, towers, buildings, ducts, and conduits.

Subsection (a)(2)(B) would amend subsection (a)(2) of Section 6409 by adding a timeframe for approval. Consistent with existing FCC rules,[47] a State or local government would have to approve a request within 60 days of the submission or the request is deemed granted. A rule of construction would further clarify that a deemed granted request requires no further action by the relevant government or instrumentality. This subsection further outlines how a determination that a request is not an eligible facilities request or eligible telecommunications facility request must be described and formatted. Finally, this subsection would address tolling due to incompleteness, supplemental submissions to provide missing information, rules for how written notice must be provided to requesting parties, and permit the State or local government and the requesting party to toll the timeframe on a mutual agreement.

Subsection (a)(2)(C) would add several paragraphs to the end of subsection (a) of Section 6409. Paragraph (4) would qualify when a request is to be considered submitted and would not allow a State or local government to require a requesting party to undertake any pre-application process. As with other sections, a request would be considered submitted on the date on which the applicant takes the first procedural step within its control to submit the application in accordance with the procedures established by the government or instrumentality for the review and approval of such a request or for a standard review for a similar facility or structure.

Paragraph (5) would limit the breadth of information that a State or local government could request, ensuring such information is reasonably related to the request. The processes outlined in this subsection are intended to match those adopted by the FCC in the *5G Upgrade Order*.[48]

Paragraph (6) allows a requesting party to bring an action in any district court with jurisdiction to enforce the provisions of this subsection with an expedited review.

Paragraph (7) would define terms for the new subsection (a) of Section 6409.

Subsection (b) would direct the Federal Communications Commission to issue final rules to implement the amendment made by subsection (a), and subsection (c) would state that such amendment shall apply to any eligible facilities request that is submitted on or after the date of the enactment of H.R. 3557.

It is the Committee's intent that Section 103 be read to preserve, to the greatest extent possible, the FCC's current rules and inter-

[47] 47 C.F.R. §§ 6100(c)(2), (4).
[48] 35 FCC Rcd 5977 ¶¶ 14–23.

pretations of Section 6409 as established in the *2014 Wireless Infrastructure Order*[49] *and 2020 5G Upgrade Order*.[50]

Section 201. Request for new franchise

Section 201 would amend Section 621 of the Communications Act of 1934 by adding a new subsection (g) that would govern the timeframe for a franchising authority to review a request for a new franchise.

Subsection (g)(1) would establish a 120-day timeframe for a franchising authority to approve or deny a request for a franchise. Subsection (g)(2) would deem granted any request for a franchise that has not been approved or denied by the franchising authority within the timeframe established in (g)(1). Subsection (g)(3) would apply the timeframe established under subsection (g)(1) to all proceeding required by a franchising authority for approval of the request. Finally, subsection (g)(4) would prohibit a franchising authority from tolling the timeframe by placing a moratorium, whether express or de facto, on the consideration of any request.

The timeframe established in subsection (g)(1) could be tolled.

Subsection (g)(5) would permit the franchising authority to toll the 120-day timeframe for incomplete requests. It would also address supplemental submissions to complete incomplete requests, describe the written notice a franchising authority must provide to a requesting party, and limit the contents of a subsequent written notice.

Subsection (g)(6) would permit the franchising authority and requesting party mutually to agree to toll the timeframe.

Subsection (g)(7) would require that a decision by a franchising authority to deny a request be in writing, supported by substantial evidence contained in a written record, and publicly released and provided to the requesting party on the same day the decision is made.

Subsection (g)(8) would define that an application is considered submitted on the date on which the applicant takes the first procedural step within its control to submit the application in accordance with the procedures established by the franchising authority for such applications.

Section 202. Request regarding placement, construction, or modification of cable equipment

Subsection (a) would amend Section 624 of the Communications Act by adding a new subsection (j) to address requests regarding placement, construction, or modification of facilities by cable operators.

Subsection (j)(1) would provide that nothing in this title would limit or affect the authority of a covered entity over decisions regarding the placement, construction, or modification of covered equipment within the covered entity's jurisdiction or safety standards for the placement, construction, or modification of that equipment. A covered entity, as defined in subparagraph (4)(C), is a state, a local government, an instrumentality of a state or local government, or a franchising authority.

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[49] *See* note 33.
[50] *See* note 36.

The Committee recognizes that in some cases, the right-of-way that a cable operator seeks to access is not owned or managed by the local franchising authority or is owned or managed by that entity in a different capacity. As a result, the Committee adopts an expanded definition to encompass all potential owners or managers of rights-of-way. Covered equipment means equipment attached to a cable system to provide service through such system.

Subsection (j)(2) would place limitations on the general authority of covered entities provided in subsection (j)(1). Subparagraph (A) would limit a covered entity from regulating the placement, construction, or modification of covered equipment in a way that prohibits or has the effect of prohibiting the ability of a cable operator to provide, improve, or enhance service using covered equipment. As with Sections 101 and 102, the Committee intends the phrase "prohibit or have the effect of prohibiting" to be interpreted consistent with *California Payphone's* "materially inhibit" standard.

Subparagraph (B) would address the timing for a covered entity to approve or deny a request for authorization to place, construct, or modify covered equipment. The covered entity would have 90 days after submission to approve or deny a request related to a covered easement or eligible support infrastructure, and 150 days after submission for all other requests. Requests that a covered entity has not acted upon within these timeframes would be deemed granted upon the expiration of the timeframe. These timeframes would apply to all proceedings required by a covered entity for the approval of the request and could not be tolled by a moratorium imposed by the covered entity on the consideration of a request, whether expressed or de facto.

Subparagraph (B) would permit the franchising authority to toll the 120-day timeframe for incomplete requests or by mutual agreement between the two parties. It would also address supplemental submissions to complete incomplete requests, describe the written notice a franchising authority must provide a requesting party, and limit the contents of a subsequent written notice. Finally, this subparagraph would define that an application is considered submitted on the date on which the applicant takes the first procedural step within its control to submit the application in accordance with the procedures established by the covered entity for such applications.

Subsection (j)(3) would permit a covered entity to charge a fee to consider a request for authorization to place, construct, or modify covered equipment. As with other state and local government fees addressed in H.R. 3557, these fees must be competitively neutral, nondiscriminatory, established in advance, calculated based on actual and direct costs, and described to a requesting party in a way that distinguishes between various types of fees, including recurring and nonrecurring fees. This subsection would further state that fees associated with a request for authorization to place, construct, or modify covered equipment may not be considered a franchise fee under Section 622 of the Communications Act.

Subsection (j)(4) would define terms used in this subsection.

Subsection (b) of Section 202 would address pending requests. Under subparagraph (1), the amendments to Section 624, as added by subsection (a), would apply to requests submitted to the covered entity before the date of enactment that have not been approved or denied, and requests submitted to the covered entity on or after

the date of enactment. Subparagraph (2) would define the date of receipt by a covered entity of a request.

Sec. 203. Cable franchise term and termination

Subsection (a) of Section 203 would amend Section 625 of the Communications Act to address the elimination or modification of requirements in a franchise.

Under amended subsection 625(a), a cable operator would be permitted to obtain the elimination or modification of any requirement in a franchise agreement by submitting a request for elimination or modification of such requirement.

Subsection (b) would require the franchising authority to eliminate or modify a requirement submitted by a cable operator not later than 120 days after the cable operator submitted the request if the cable operator demonstrates good cause for the elimination or modification of the requirement. Good cause would include the need to conform to an applicable Federal or state law, to address a change in technology, or commercial impracticality. "Commercial impracticality" means that it is "commercially impracticable for the operator to comply with the requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based." This "commercial impracticality" definition would be the same as it is under current law.

Subsection (c) would deem requests for elimination or modification granted if the franchising authority fails to approve or deny the request within the 120 days required under subsection (b)(1). This subsection would not apply to requests for the elimination or modification of a requirement for services related to public, educational, or government access.

Under subsection (d), any cable operator whose request for elimination or modification of requirement has been denied by a franchising authority could seek judicial review of the decision under the provisions of Section 635. The reviewing court would only grant the elimination or modification if the cable operator demonstrated that it met the standards in subsection (b).

Subsection (e) would define when a request is considered submitted.

Subsection 203(b) of this Act would amend Section 626 of the Communications Act. Under amended subsection 626(a), a franchise would continue in effect until the franchise is revoked or terminated under subsection (b).

Subsection (b)(1) would prohibit, subject to certain limitations, the revocation of a franchise by a franchising authority, termination by a cable operator, or revocation or termination by operation of law.

Subsection (b)(2) would define when termination or revocation of a franchise is permitted. Under subparagraph (A) termination or revocation of a franchise by cable operator would be permitted upon submission of a written request for a franchising authority to revoke the franchise. The franchise would be revoked 90 days after the date the request is submitted or deemed revoked if the franchising authority does not approve the request by that time. Under subparagraph (B), a franchising authority would be permitted to revoke a franchise if it finds that the cable operator knowingly and

willfully failed to meet substantially a material requirement imposed by the franchise, despite having a reasonable opportunity to cure the failure, and the franchising authority has not waived the requirement or acquiesced with the failure.

Subsection (b)(3) would establish administrative or judicial review of a franchising authority's decision to revoke a franchise. The cable operator would be permitted to petition the FCC for review of the revocation, subject to procedures outlined in this subsection, or seek judicial review under Section 635. During such a review, the FCC or the reviewing court would be authorized to stay the franchising authority's revocation.

Subsection 203(c) of this Act would make conforming amendments to various portions of the Communications Act affected by the amendments to Sections 625 and 626.

Subsection (d) would make the amendments made by Section 203 effective six months after the enactment of H.R. 3557. It would further apply this section and its amendments to franchises granted on or after the effective date, or before that date if the franchise is in effect or if the franchise has expired but the cable operator is still performing under the provisions of that franchise as if the franchise had not expired.

Sec. 204. Sales of cable systems

Subsection (a) of Section 204 would amend Section 627 of the Communications Act to address the sales and transfers of cable systems.

Under amended Section 627(a), if a franchise held by a cable operator is revoked and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer would be at fair market value.

Subsection (b) would limit the authority of a franchising authority regarding the transfer of a franchise. A franchising authority would be prohibited from precluding a cable operator from transferring a franchise to any person to which the franchise was not initially granted and who agrees to accept all terms of the franchise in effect at the time of transfer. The franchising authority may require the cable operator that initially held the franchise to notify the franchising authority 15 days before the transfer of the franchise. "Transfer of a franchise" would be defined in paragraph (3).

Subsection (b) of Section 204 of this Act would make the amendments made by this section effective six months after the enactment of H.R. 3557.

Subsection (c) would apply this section and its amendments to franchises granted on or after the effective date or before that date if the franchise is in effect or if the franchise has expired but the cable operator is still performing under the provisions of that franchise as if the franchise had not expired.

Section 301. Application of NEPA and NHPA to certain communications projects

Subsection (a) would exempt covered projects from reviews that would otherwise be applicable to such projects pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) or Section 300320 of title 54, United States Code (the National His-

toric Preservation Act (NHPA). Covered projects, as defined in Section 304, are:

- A project to collocate a personal wireless facility on an existing structure or to modify a personal wireless facility;
- A project to place, construct, or modify a telecommunications service facility on or in existing infrastructure;
- A project to deploy a small personal wireless facility (small cell);
- A project to deploy or modify a communications facility carried out entirely within a floodplain;
- A project to deploy or modify a communications facility carried out entirely within a brownfield site;
- A project to remove permanently equipment or services from vendors posing a national security threat with equipment or services from trusted vendors;
- A project to replace a communications facility damaged by a natural disaster or emergency within an area where the President, Governor, or Chief Executive of a Tribe declared a major disaster or an emergency, or improve a communications facility in that area as necessary for recovery or to prevent or mitigate future disaster or emergency;
- A project to place a communications facility in a right-of-way on federal land where a previous communications facility previously existed, the new facility is a small cell, or the new facility is no more than 50 feet tall or 10 feet taller than an existing structure in the right-of-way.

The Committee intends for subsection (a) to apply to "covered projects" that do not place any communications facilities on federal lands but are a "major Federal action" under NEPA or a "federal undertaking" under the NHPA and thus subject to those statutory provisions in certain circumstances.

Additionally, these covered projects are intended to encompass the placement and installation of equipment typically used by wireline and wireless broadband providers to deliver service to end-users. This includes fiber-optic cable, any associated duct, conduit or other necessary network equipment.

Subsection (b) would exempt covered easements from review under NEPA and NHPA where there is already a communications or utility facility on that building or property, or where the covered easement is for a communications facility in an existing right-of-way. A covered easement, as defined in Section 304, is "an easement, right-of-way, or lease with respect to a building or other property owned by the Federal Government, excluding Tribal land held in trust by the Federal Government (unless the Indian tribal government with respect to such land requests that the Commission not exclude the land for purposes of this definition), for the right to install, construct, modify, or maintain a communications facility or a utility facility."

Under subsection (c), requests to modify an existing wireless tower or base station that do not substantially change the physical dimensions of the tower or base station would be exempt from NEPA and NHPA.

Section 302. Presumption with respect to certain complete FCC forms

Section 302 would codify the FCC's actions to streamline the Tribal notification process for new wireless towers and antennas. Subsection (a) would establish a presumption for an applicant that submitted a complete FCC Form 621 or 622, but the Tribe has not acted on that request within 45 days of receipt. The applicant would be presumed to have made a good-faith effort to provide the information reasonably necessary for the Tribe to ascertain whether historic properties of religious or cultural significance to the Tribe may be affected by the undertaking. The Tribe would also be presumed to have disclaimed interest in the undertaking.

Subsection (b) would establish factors for a Tribe to overcome the presumption established in subsection (a). These factors are whether the applicant failed to make a reasonable attempt to follow up with the Tribe between 30 and 50 days after submitting the Form 621/622, and whether the rules of the FCC or Form 620/621 violate a Nationwide Programmatic Agreement of the FCC.

Section 303. Rule of construction

This section would establish a rule of construction that this title may not be construed to affect the FCC's obligation to evaluate radiofrequency exposure under NEPA.

Section 304. Definitions

This section would define terms used in title III.

Section 401. Timely consideration of applications for Federal easements, rights-of-way, and leases

Section 6409(b)(3) of the Middle Class Tax Relief and Job Creation Act of 2012 established a 270-day timeframe for an executive agency to grant or deny an application for an easement, right-of-way, or lease to, in, over, or on a building or other property owned by the Federal Government for the right to install, construct, modify, or maintain a communications facility.

Subsection (a) would amend Section 6409(b)(3) to state that if an executive agency has not granted or denied an application during this timeframe, the application would be deemed granted the day after the timeframe expires. It would also establish a process for tolling the 270-day timeframe for incomplete applications and address supplemental submissions to provide the agency with the missing information. Finally, subsection (a) would permit the parties to toll the timeframe by mutual agreement and when an application is considered submitted.

Subsection (b) would make the amendments in subsection (a) applicable to any application submitted to an executive agency on or after the date of enactment.

Section 402. Streamlining of certain fees relating to broadband infrastructure deployed using grant funds under BEAD program

Section 402 would amend the Infrastructure Investment and Jobs Act by requiring states submitting final proposals for the Broadband Equity, Access, and Deployment (BEAD) program to certify that, for projects funded using BEAD subgrants, the fees charged by the state or any subdivision to review an application or

for use of a right-of-way are competitively neutral, nondiscriminatory, established in advance, calculated based on actual and direct costs, and described to a requesting party in a way that distinguishes between various types of fees, including recurring and nonrecurring fees.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

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TITLE II—COMMON CARRIERS

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PART II—DEVELOPMENT OF COMPETITIVE MARKETS

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[SEC. 253. REMOVAL OF BARRIERS TO ENTRY.

[(a) IN GENERAL.—No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[(b) STATE REGULATORY AUTHORITY.—Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

[(c) STATE AND LOCAL GOVERNMENT AUTHORITY.—Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

[(d) PREEMPTION.—If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

[(e) COMMERCIAL MOBILE SERVICE PROVIDERS.—Nothing in this section shall affect the application of section 332(c)(3) to commercial mobile service providers.

[(f) RURAL MARKETS.—It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply—

[(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) that effectively prevents a competitor from meeting the requirements of section 214(e)(1); and

[(2) to a provider of commercial mobile services.]

SEC. 253. REMOVAL OF BARRIERS TO ENTRY.

(a) IN GENERAL.—No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide, improve, or enhance the provision of any interstate or intrastate telecommunications service.

(b) PLACEMENT, CONSTRUCTION, OR MODIFICATION OF TELECOMMUNICATIONS SERVICE FACILITIES.—

(1) PROHIBITION ON DISCRIMINATION.—The regulation of the placement, construction, or modification of a telecommunications service facility by a State or local government or instrumentality thereof may not discriminate—

(A) among telecommunications service facilities—

(i) based on the technology used to provide services; or

(ii) based on the services provided; or

(B) against telecommunications service facilities, as compared to the regulation of the placement, construction, or modification of other facilities.

(2) TIMEFRAME TO GRANT OR DENY REQUESTS.—

(A) IN GENERAL.—A State or local government or instrumentality thereof shall grant or deny a request for authorization to place, construct, or modify a telecommunications service facility not later than—

(i) if the request is for authorization to place, construct, or modify such facility in or on eligible support infrastructure, 90 days after the date on which the request is submitted by the requesting party to the government or instrumentality; or

(ii) for any other action relating to such facility, 150 days after the date on which the request is submitted by the requesting party to the government or instrumentality.

(B) APPLICABILITY.—The applicable timeframe under subparagraph (A) shall apply collectively to all proceedings, including permits and authorizations, required by a State or local government or instrumentality thereof for the approval of the request.

(C) NO MORITORIA.—A timeframe under subparagraph (A) may not be tolled by any moratorium, whether express or de facto, imposed by a State or local government or instrumentality thereof on the submission, acceptance, or con-

sideration of requests for authorization to place, construct, or modify a telecommunications service facility.

(D) TOLLING DUE TO INCOMPLETENESS.—

(i) INITIAL REQUEST INCOMPLETE.—If, not later than 30 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a request for authorization to place, construct, or modify a telecommunications service facility, the government or instrumentality provides to the requesting party a written notice described in clause (iii) with respect to the request, the timeframe described in subparagraph (A) is tolled with respect to the request until the date on which the requesting party submits to the government or instrumentality a supplemental submission in response to the notice.

(ii) SUPPLEMENTAL SUBMISSION INCOMPLETE.—If, not later than 10 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a supplemental submission in response to a written notice described in clause (iii), the government or instrumentality provides to the requesting party a written notice described in clause (iii) with respect to the supplemental submission, the timeframe under subparagraph (A) is further tolled until the date on which the requesting party submits to the government or instrumentality a subsequent supplemental submission in response to the notice.

(iii) WRITTEN NOTICE DESCRIBED.—The written notice described in this clause is, with respect to a request described in subparagraph (A) or a supplemental submission described in clause (i) or (ii) submitted to a State or local government or instrumentality thereof by a requesting party, a written notice from the government or instrumentality to the requesting party—

(I) stating that all of the information (including any form or other document) required by the government or instrumentality to be submitted for the request to be considered complete has not been submitted;

(II) identifying the information described in subclause (I) that was not submitted; and

(III) including a citation to a specific provision of a publicly available rule, regulation, or standard issued by the government or instrumentality requiring that such information be submitted with such a request.

(iv) LIMITATION ON SUBSEQUENT WRITTEN NOTICE.—If a written notice provided by a State or local government or instrumentality thereof to a requesting party under clause (ii) with respect to a supplemental submission identifies as not having been submitted any information that was not identified as not having been submitted in the prior written notice under this subparagraph in response to which the supplemental submission was submitted, the subsequent written notice

shall be treated as not having been provided to the requesting party.

(E) TOLLING BY MUTUAL AGREEMENT.—The timeframe under subparagraph (A) may be tolled by mutual agreement between the State or local government or instrumentality thereof and the requesting party.

(3) DEEMED GRANTED.—

(A) IN GENERAL.—If a State or local government or instrumentality thereof has neither granted nor denied a request within the applicable timeframe under paragraph (2), the request shall be deemed granted on the date on which the government or instrumentality receives a written notice of the failure to grant or deny from the requesting party.

(B) RULE OF CONSTRUCTION.—In the case of a request that is deemed granted under subparagraph (A), the placement, construction, or modification requested in such request shall be considered to be authorized, without any further action by the government or instrumentality, beginning on the date on which such request is deemed granted under such subparagraph.

(4) WRITTEN DECISION AND RECORD.—A decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify a telecommunications service facility shall be—

(A) in writing;

(B) supported by substantial evidence contained in a written record; and

(C) publicly released, and provided to the requesting party, on the same day such decision is made.

(5) FEES.—

(A) IN GENERAL.—To the extent permitted by law, a State or local government or instrumentality thereof may charge a fee that meets the requirements under subparagraph (B)—

(i) to consider a request for authorization to place, construct, or modify a telecommunications service facility; or

(ii) for use of a right-of-way or a facility in a right-of-way owned or managed by the government or instrumentality for the placement, construction, or modification of a telecommunications service facility.

(B) REQUIREMENTS.—A fee charged under subparagraph (A) shall be—

(i) competitively neutral, technology neutral, and nondiscriminatory;

(ii) established in advance and publicly disclosed;

(iii) calculated—

(I) based on actual and direct costs for—

(aa) review and processing of requests; and

(bb) repairs and replacement of—

(AA) components and materials directly resulting from and affected by the placement, construction, or modification (including the installation or improvement) of telecommunications service facilities; or

(BB) equipment that facilitates the placement, construction, or modification (including the installation or improvement) of such facilities; and

(II) using, for purposes of subclause (I), only costs that are objectively reasonable; and

(iv) described to a requesting party in a manner that distinguishes between—

(I) nonrecurring fees and recurring fees; and

(II) the use of facilities on which telecommunications service facilities or infrastructure for compatible uses are already located and facilities on which there are no telecommunications service facilities or infrastructure for compatible uses as of the date on which the request is submitted by the requesting party to the government or instrumentality.

(6) TRANSPORTATION CROSSINGS.—

(A) IN GENERAL.—An authorization by a State or local government or instrumentality thereof to place, construct, or modify a telecommunications service facility in a right-of-way owned or managed by the government or instrumentality shall be treated, without further action, as sufficient authority to place, construct, or modify such facility (as the case may be) above or under a transportation crossing that intersects such right-of-way.

(B) REGULATIONS.—Not later than 1 year after the date of the enactment of this paragraph, the Commission, in coordination with the Secretary of Transportation, shall promulgate regulations to implement subparagraph (A) in a manner that—

(i) ensures safety;

(ii) prevents interference with transportation crossings and related transportation operations;

(iii) allows for the timely and efficient placement, construction, and modification of telecommunications service facilities; and

(iv) establishes requirements and standards for just and reasonable compensation to private owners of transportation crossings affected by such subparagraph, including compensation for costs related to the deployment of such facilities.

(C) APPLICABILITY.—Subparagraph (A) shall apply to authorizations granted on and after the date on which regulations are promulgated under subparagraph (B).

(c) JUDICIAL REVIEW.—

(1) IN GENERAL.—A person adversely affected by a State or local statute, regulation, or other legal requirement, or by a final action or failure to act by a State or local government or instrumentality thereof, that is inconsistent with this section may commence an action in any court of competent jurisdiction.

(2) TIMING.—

(A) EXPEDITED BASIS.—A court shall hear and decide an action commenced under paragraph (1) on an expedited basis.

(B) FINAL ACTION OR FAILURE TO ACT.—An action may only be commenced under paragraph (1) on the basis of a final action or failure to act by a State or local government or instrumentality thereof, if commenced not later than 30 days after such action or failure to act.

(d) PRESERVATION OF STATE REGULATORY AUTHORITY.—Nothing in this section shall affect the ability of a State to impose, on a competitively neutral and nondiscriminatory basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(e) PRESERVATION OF STATE AND LOCAL GOVERNMENT AUTHORITY.—Except as explicitly set forth in this section, nothing in this section affects the authority of a State or local government or instrumentality thereof to manage, on a competitively neutral and nondiscriminatory basis, the public rights-of-way or to require, on a competitively neutral and nondiscriminatory basis, fair and reasonable compensation from telecommunications providers for use of public rights-of-way, if the compensation required meets the requirements of subsection (b)(5).

(f) PREEMPTION.—

(1) IN GENERAL.—If, after notice and an opportunity for public comment, the Commission determines that a State or local government or instrumentality thereof has permitted or imposed a statute, regulation, or legal requirement that violates or is inconsistent with this section, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(2) TIMING.—Not later than 120 days after receiving a petition for preemption of the enforcement of a statute, regulation, or legal requirement as described in paragraph (1), the Commission shall grant or deny the petition.

(g) COMMERCIAL MOBILE SERVICE PROVIDERS; CABLE OPERATORS.—Nothing in this section shall affect the application of section 332(c)(3) to commercial mobile service providers or section 621 to cable operators.

(h) RURAL MARKETS.—It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply—

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) that effectively prevents a competitor from meeting the requirements of section 214(e)(1); and

(2) to a provider of commercial mobile services.

(i) WHEN REQUEST CONSIDERED SUBMITTED.—For the purposes of this section, a request to a State or local government or instrumentality thereof shall be considered submitted on the date on which the requesting party takes the first procedural step within the control of the requesting party—

(1) to submit such request in accordance with the procedures established by the government or instrumentality for the review and approval of such a request; or

(2) in the case of a government or instrumentality that has not established specific procedures for the review and approval of such a request, to submit to the government or instrumentality the type of filing that is typically required to initiate a standard review for a similar facility or structure.

(j) DEFINITIONS.—In this section:

(1) ELIGIBLE SUPPORT INFRASTRUCTURE.—The term "eligible support infrastructure" means infrastructure that supports or houses a telecommunications service facility (or that is designed for or capable of supporting or housing such a facility) at the time when a request to a State or local government or instrumentality thereof for authorization to place, construct, or modify a telecommunications service facility in or on the infrastructure is submitted by the requesting party to the government or instrumentality.

(2) TELECOMMUNICATIONS SERVICE FACILITY.—The term "telecommunications service facility"—

(A) means a facility that is designed or used to provide or facilitate the provision of any interstate or intrastate telecommunications service; and

(B) includes a facility described in subparagraph (A) that is used to provide other services.

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TITLE III—SPECIAL PROVISIONS RELATING TO RADIO

PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 332. MOBILE SERVICES.

(a) In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 1 of this Act, whether such actions will—

(1) promote the safety of life and property;

(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;

(3) encourage competition and provide services to the largest feasible number of users; or

(4) increase interservice sharing opportunities between private mobile services and other services.

(b)(1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of title 5, United States Code, or section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of chapter 10 of title 5, United States Code.

(c) REGULATORY TREATMENT OF MOBILE SERVICES.—

(1) COMMON CARRIER TREATMENT OF COMMERCIAL MOBILE SERVICES.—(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act, except for such provisions of title II as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208, and may specify any other provision only if the Commission determines that—

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

(C) As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

(D) The Commission shall, not later than 180 days after the date of enactment of this subparagraph, complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

(2) NON-COMMON CARRIER TREATMENT OF PRIVATE MOBILE SERVICES.—A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this Act. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to the enactment of the Omnibus Budget Reconciliation Act of 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) STATE PREEMPTION.—(A) Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that—

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, petition the Commission requesting that the State be authorized to continue exercising authority

over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

(4) REGULATORY TREATMENT OF COMMUNICATIONS SATELLITE CORPORATION.—Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 of the corporation authorized by title III of such Act.

(5) SPACE SEGMENT CAPACITY.—Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

(6) FOREIGN OWNERSHIP.—The Commission, upon a petition for waiver filed within 6 months after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, may waive the application of section 310(b) to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b).

[(7) PRESERVATION OF LOCAL ZONING AUTHORITY.—

[(A) GENERAL AUTHORITY.—Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

[(B) LIMITATIONS.—

[(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

[(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

[(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

[(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

[(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

[(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

[(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

[(C) DEFINITIONS.—For purposes of this paragraph—

[(i) the term "personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

[(ii) the term "personal wireless service facilities" means facilities for the provision of personal wireless services; and

[(iii) the term "unlicensed wireless service" means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v)).]

(7) PRESERVATION OF LOCAL ZONING AUTHORITY.—

(A) GENERAL AUTHORITY.—Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, or modification of personal wireless service facilities.

(B) LIMITATIONS.—

(i) IN GENERAL.—The regulation of the placement, construction, or modification of a personal wireless service facility by any State or local government or instrumentality thereof—

(I) shall not discriminate among personal wireless service facilities or providers of communications service, including by providing exclusive or preferential use of facilities to a particular provider or class of providers of personal wireless service; and

(II) shall not prohibit or have the effect of prohibiting the provision, improvement, or enhancement of personal wireless service.

(ii) ENGINEERING STANDARDS; AESTHETIC REQUIREMENTS.—It is not a violation of clause (i) for a State or local government or instrumentality thereof to establish for personal wireless service facilities, or structures that support such facilities, objective, reasonable, and nondiscriminatory—

(I) structural engineering standards based on generally applicable codes;

(II) safety requirements (subject to clause (vi)); or

(III) aesthetic or concealment requirements (unless such requirements prohibit or have the effect of prohibiting the installation or modification of such facilities or structures).

(iii) TIMEFRAMES.—

(I) IN GENERAL.—A State or local government or instrumentality thereof shall grant or deny a request for authorization to place, construct, or modify a personal wireless service facility not later than—

(aa) in the case of a request for authorization to place, construct, or modify a personal wireless service facility that is not a small personal wireless service facility—

(AA) if the request is for authorization to place, construct, or modify such facility using an existing structure, including with respect to an area that has not previously been zoned for personal wireless service facilities (other than small personal wireless service facilities), 90 days after the date on which the request is submitted by the requesting party to the government or instrumentality; or

(BB) if the request is for any other action relating to such facility, 150 days after the date on which the request is sub-

mitted by the requesting party to the government or instrumentality; and

(bb) in the case of a request for authorization to place, construct, or modify a small personal wireless service facility—

(AA) if the request is for authorization to place, construct, or modify such facility using an existing structure, including with respect to an area that has not previously been zoned for personal wireless service facilities, 60 days after the date on which the request is submitted by the requesting party to the government or instrumentality; or

(BB) if the request is for any other action relating to such facility, 90 days after the date on which the request is submitted by the requesting party to the government or instrumentality.

(II) TREATMENT OF BATCHED REQUESTS.—In the case of requests described in subclause (I) that are submitted as part of a single batch by the requesting party to the government or instrumentality on the same day, the applicable timeframe under such subclause for each request in the batch shall be the longest timeframe under such subclause that would be applicable to any request in the batch if such requests were submitted separately.

(III) APPLICABILITY.—The applicable timeframe under subclause (I) shall apply collectively to all proceedings required by a State or local government or instrumentality thereof for the approval of the request.

(IV) NO MORITORIA.—A timeframe under subclause (I) may not be tolled by any moratorium, whether express or de facto, imposed by a State or local government or instrumentality thereof on the submission, acceptance, or consideration of any request for authorization to place, construct, or modify a personal wireless service facility.

(V) TOLLING DUE TO INCOMPLETENESS.—

(aa) INITIAL REQUEST INCOMPLETE.—

(AA) SMALL PERSONAL WIRELESS SERVICE FACILITIES.—If, not later than 10 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a request for authorization to place, construct, or modify a small personal wireless service facility, the government or instrumentality provides to the requesting party a written notice described in item (cc) with respect to the request, the timeframe described in subclause (I) is tolled with respect to the request and shall restart at zero on the date

on which the requesting party submits to the government or instrumentality a supplemental submission in response to the notice.

(BB) OTHER PERSONAL WIRELESS SERVICE FACILITIES.—If, not later than 30 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a request for authorization to place, construct, or modify a personal wireless service facility that is not a small personal wireless service facility, the government or instrumentality provides to the requesting party a written notice described in item (cc) with respect to the request, the timeframe described in subclause (I) is tolled with respect to the request until the date on which the requesting party submits to the government or instrumentality a supplemental submission in response to the notice.

(bb) SUPPLEMENTAL SUBMISSION INCOMPLETE.—If, not later than 10 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a supplemental submission in response to a written notice described in item (cc), the government or instrumentality provides to the requesting party a written notice described in item (cc) with respect to the supplemental submission, the timeframe under subclause (I) is further tolled until the date on which the requesting party submits to the government or instrumentality a subsequent supplemental submission in response to the notice.

(cc) WRITTEN NOTICE DESCRIBED.—The written notice described in this item is, with respect to a request described in subclause (I) or a supplemental submission described in item (aa) or (bb) submitted to a State or local government or instrumentality thereof by a requesting party, a written notice from the government or instrumentality to the requesting party—

(AA) stating that all of the information (including any form or other document) required by the government or instrumentality to be submitted for the request to be considered complete has not been submitted;

(BB) identifying the information described in subitem (AA) that was not submitted; and

(CC) including a citation to a specific provision of a publicly available rule, reg-

ulation, or standard issued by the government or instrumentality requiring that such information be submitted with such a request.

(dd) LIMITATION ON SUBSEQUENT WRITTEN NOTICE.—If a written notice provided by a State or local government or instrumentality thereof to a requesting party under item (bb) with respect to a supplemental submission identifies as not having been submitted any information that was not identified as not having been submitted in the prior written notice under this subclause in response to which the supplemental submission was submitted, the subsequent written notice shall be treated as not having been provided to the requesting party.

(VI) TOLLING BY MUTUAL AGREEMENT.—The timeframe under subclause (I) may be tolled by mutual agreement between the State or local government or instrumentality thereof and the requesting party.

(iv) DEEMED GRANTED.—

(I) IN GENERAL.—If a State or local government or instrumentality thereof fails to take final action to grant or deny a request within the applicable timeframe under subclause (I) of clause (iii), the request shall be deemed granted on the date on which the government or instrumentality receives a written notice of the failure from the requesting party.

(II) RULE OF CONSTRUCTION.—In the case of a request that is deemed granted under subclause (I), the placement, construction, or modification requested in the request shall be considered to be authorized, without any further action by the government or instrumentality, beginning on the date on which the request is deemed granted under such subclause.

(v) WRITTEN DECISION AND RECORD.—Any decision by a State or local government or instrumentality thereof to deny a request for authorization to place, construct, or modify a personal wireless service facility shall be—

(I) in writing;

(II) supported by substantial evidence contained in a written record; and

(III) publicly released, and provided to the requesting party, on the same day such decision is made.

(vi) ENVIRONMENTAL EFFECTS OF RADIO FREQUENCY EMISSIONS.—No State or local government or instrumentality thereof may regulate the operation, placement, construction, or modification of personal wireless service facilities on the basis of the environmental ef-

fects of radio frequency emissions to the extent that such facilities or structures comply with the Commission's regulations concerning such emissions.

(vii) FEES.—To the extent permitted by law, a State or local government or instrumentality thereof may charge a fee to consider a request for authorization to place, construct, or modify a personal wireless service facility or a fee for use of a right-of-way or a facility in a right-of-way owned or managed by the government or instrumentality for the placement, construction, or modification of a personal wireless service facility, if the fee is—

(I) competitively neutral, technology neutral, and nondiscriminatory;

(II) established in advance and publicly disclosed;

(III) calculated—

(aa) based on actual and direct costs for—

(AA) review and processing of requests; and

(BB) repairs and replacement of components and materials directly resulting from and affected by the placement, construction, or modification (including the installation or improvement) of personal wireless service facilities or repairs and replacement of equipment that facilitates the placement, construction, or modification (including the installation or improvement) of such facilities; and

(bb) using, for purposes of item (aa), only costs that are objectively reasonable; and

(IV) described to a requesting party in a manner that distinguishes between—

(aa) nonrecurring fees and recurring fees; and

(bb) the use of facilities on which personal wireless service facilities are already located and facilities on which there are no personal wireless service facilities as of the date on which the request is submitted by the requesting party to the government or instrumentality.

(C) JUDICIAL OR ADMINISTRATIVE REVIEW.—

(i) JUDICIAL REVIEW.—Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this paragraph may, within 30 days after the action or failure to act, commence an action in any court of competent jurisdiction, which shall hear and decide the action on an expedited basis.

(ii) ADMINISTRATIVE REVIEW.—

(I) IN GENERAL.—Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof

that is inconsistent with this paragraph may petition the Commission to review such action or failure to act.

(II) TIMING.—Not later than 120 days after receiving a petition under subclause (I), the Commission shall grant or deny such petition.

(D) WHEN REQUEST CONSIDERED SUBMITTED.—For the purposes of this paragraph, a request to a State or local government or instrumentality thereof shall be considered submitted on the date on which the requesting party takes the first procedural step within the control of the requesting party—

(i) to submit such request in accordance with the procedures established by the government or instrumentality for the review and approval of such a request; or

(ii) in the case of a government or instrumentality that has not established specific procedures for the review and approval of such a request, to submit to the government or instrumentality the type of filing that is typically required to initiate a standard review for a similar facility or structure.

(E) RULE OF CONSTRUCTION.—Nothing in this paragraph may be construed to affect section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455(a)).

(F) DEFINITIONS.—In this paragraph:

(i) ANTENNA.—The term "antenna" means an apparatus designed for the purpose of emitting radiofrequency radiation, to be operated or operating from a fixed location for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds.

(ii) COMMUNICATIONS NETWORK.—The term "communications network" means a network used to provide a communications service.

(iii) COMMUNICATIONS SERVICE.—The term "communications service" means each of—

(I) cable service, as defined in section 602;

(II) information service;

(III) telecommunications service; and

(IV) personal wireless service.

(iv) GENERALLY APPLICABLE CODE.—The term "generally applicable code" means a uniform building, fire, electrical, plumbing, or mechanical code adopted by a national code organization, or a local amendment to such a code, to the extent not inconsistent with this Act.

(v) NETWORK INTERFACE DEVICE.—The term "network interface device" means a telecommunications demarcation device and cross-connect point that—

(I) is adjacent or proximate to—

(aa) a small personal wireless service facility; or

(bb) a structure supporting a small personal wireless service facility; and

(II) demarcates the boundary with any wireline backhaul facility.

(vi) PERSONAL WIRELESS SERVICE.—The term "personal wireless service" means any fixed or mobile service (other than a broadcasting service) provided via licensed or unlicensed frequencies, including—

(I) commercial mobile service;

(II) commercial mobile data service (as defined in section 6001 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1401));

(III) unlicensed wireless service; and

(IV) common carrier wireless exchange access service.

(vii) PERSONAL WIRELESS SERVICE FACILITY.—The term "personal wireless service facility" means a facility used to provide or support the provision of personal wireless service.

(viii) SMALL PERSONAL WIRELESS SERVICE FACILITY.—The term "small personal wireless service facility" means a personal wireless service facility in which each antenna is not more than 3 cubic feet in volume (excluding a wireline backhaul facility connected to such personal wireless service facility).

(ix) UNLICENSED WIRELESS SERVICE.—The term "unlicensed wireless service"—

(I) means the offering of telecommunications service or information service using a duly authorized device that does not require an individual license; and

(II) does not include the provision of direct-to-home satellite services, as defined in section 303(v).

(x) WIRELINE BACKHAUL FACILITY.—The term "wireline backhaul facility" means an above-ground or underground wireline facility used to transport communications service or other electronic communications from a small personal wireless service facility or the adjacent network interface device of such facility to a communications network.

(8) MOBILE SERVICES ACCESS.—A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

(d) DEFINITIONS.—For purposes of this section—

(1) the term "commercial mobile service" means any mobile service (as defined in section 3) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

(2) the term "interconnected service" means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B); and

(3) the term "private mobile service" means any mobile service (as defined in section 3) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

* * * * * * *

TITLE VI—CABLE COMMUNICATIONS

PART I—GENERAL PROVISIONS

SEC. 601. PURPOSES.

The purposes of this title are to—

(1) establish a national policy concerning cable communications;

(2) establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;

(3) establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of cable systems;

(4) assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public**[**;**]***; and*

[(5) establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this title; and**]**

[(6)**]** *(5)* promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

SEC. 602. DEFINITIONS.

For purposes of this title—

(1) the term "activated channels" means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;

(2) the term "affiliate", when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person;

(3) the term "basic cable service" means any service tier which includes the retransmission of local television broadcast signals;

(4) the terms "cable channel" or "channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation);

(5) the term "cable operator" means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

(6) the term "cable service" means—

(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

(B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;

(7) the term "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of this Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 653 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility systems;

(8) the term "Federal agency" means any agency of the United States, including the Commission;

(9) the term "franchise" means an [initial] authorization[, or renewal thereof (including a renewal of an authorization which has been granted subject to section 626),] issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system;

(10) the term "franchising authority" means any governmental entity empowered by Federal, State, or local law to grant a franchise;

(11) the term "grade B contour" means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

(12) the term "interactive on-demand services" means a service providing video programming to subscribers over switched

networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider;

(13) the term "multichannel video programming distributor" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;

(14) the term "other programming service" means information that a cable operator makes available to all subscribers generally;

(15) the term "person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity;

(16) the term "public, educational, or governmental access facilities" means—

(A) channel capacity designated for public, educational, or governmental use; and

(B) facilities and equipment for the use of such channel capacity;

(17) the term "service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator;

(18) the term "State" means any State, or political subdivision, or agency thereof;

(19) the term "usable activated channels" means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and

(20) the term "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

PART II—USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS

SEC. 611. CABLE CHANNELS FOR PUBLIC, EDUCATIONAL, OR GOVERNMENTAL USE.

(a) A franchising authority may establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use only to the extent provided in this section.

(b) A franchising authority may in its request for proposals require as part of a franchise, [and may require as part of a cable operator's proposal for a franchise renewal, subject to section 626,] that channel capacity be designated for public, educational, or governmental use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this section.

(c) A franchising authority may enforce any requirement in any franchise regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any

provisions of the franchise for services, facilities, or equipment proposed by the cable operator which relate to public, educational, or governmental use of channel capacity, whether or not required by the franchising authority pursuant to subsection (b).

(d) In the case of any franchise under which channel capacity is designated under subsection (b), the franchising authority shall prescribe—

(1) rules and procedures under which the cable operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and

(2) rules and procedures under which such permitted use shall cease.

(e) Subject to section 624(d), a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this section, except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity.

(f) For purposes of this section, the term "institutional network" means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.

SEC. 612. CABLE CHANNELS FOR COMMERCIAL USE.

(a) The purpose of this section is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.

(b)(1) A cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements:

(A) An operator of any cable system with 36 or more (but not more than 54) activated channels shall designate 10 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

(B) An operator of any cable system with 55 or more (but not more than 100) activated channels shall designate 15 percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

(C) An operator of any cable system with more than 100 activated channels shall designate 15 percent of all such channels.

(D) An operator of any cable system with fewer than 36 activated channels shall not be required to designate channel capacity for commercial use by persons unaffiliated with the operator, unless the cable system is required to provide such channel capacity under the terms of a franchise in effect on the date of the enactment of this title.

(E) An operator of any cable system in operation on the date of the enactment of this title shall not be required to remove any service actually being provided on July 1, 1984, in order to comply with this section, but shall make channel capacity available for commercial use as such capacity becomes avail-

able until such time as the cable operator is in full compliance with this section.

(2) Any Federal agency, State, or franchising authority may not require any cable system to designate channel capacity for commercial use by unaffiliated persons in excess of the capacity specified in paragraph (1), except as otherwise provided in this section.

(3) A cable operator may not be required, as part of a request for proposals [or as part of a proposal for renewal, subject to section 626,] to designate channel capacity for any use (other than commercial use by unaffiliated persons under this section) except as provided in sections 611 and 637, but a cable operator may offer in a franchise[, or proposal for renewal thereof,] to provide, consistent with applicable law, such capacity for other than commercial use by such persons.

(4) A cable operator may use any unused channel capacity designated pursuant to this section until the use of such channel capacity is obtained, pursuant to a written agreement, by a person unaffiliated with the operator.

(5) For the purposes of this section, the term "commercial use" means the provision of video programming, whether or not for profit.

(6) Any channel capacity which has been designated for public, educational, or governmental use may not be considered as designated under this section for commercial use for purpose of this section.

(c)(1) If a person unaffiliated with the cable operator seeks to use channel capacity designated pursuant to subsection (b) for commercial use, the cable operator shall establish, consistent with the purpose of this section and with rules prescribed by the Commission under paragraph (4), the price, terms, and conditions of such use which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.

(2) A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.

(3) Any cable system channel designated in accordance with this section shall not be used to provide a cable service that is being provided over such system on the date of the enactment of this title, if the provision of such programming is intended to avoid the purpose of this section.

(4)(A) The Commission shall have the authority to—

(i) determine the maximum reasonable rates that a cable operator may establish pursuant to paragraph (1) for commercial use of designated channel capacity, including the rate charged for the billing of rates to subscribers and for the collection of revenue from subscribers by the cable operator for such use;

(ii) establish reasonable terms and conditions for such use, including those for billing and collection; and

(iii) establish procedures for the expedited resolution of disputes concerning rates or carriage under this section.

(B) Within 180 days after the date of enactment of this paragraph, the Commission shall establish rules for determining maximum reasonable rates under subparagraph (A)(i), for establishing terms and conditions under subparagraph (A)(ii), and for providing procedures under subparagraph (A)(iii).

(d) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available for use pursuant to this section may bring an action in the district court of the United States for the judicial district in which the cable system is located to compel that such capacity be made available. If the court finds that the channel capacity sought by such person has not been made available in accordance with this section, or finds that the price, terms, or conditions established by the cable operator are unreasonable, the court may order such system to make available to such person the channel capacity sought, and further determine the appropriate price, terms, or conditions for such use consistent with subsection (c), and may award actual damages if it deems such relief appropriate. In any such action, the court shall not consider any price, term, or condition established between an operator and an affiliate for comparable services.

(e)(1) Any person aggrieved by the failure or refusal of a cable operator to make channel capacity available pursuant to this section may petition the Commission for relief under this subsection upon a showing of prior adjudicated violations of this section. Records of previous adjudications resulting in a court determination that the operator has violated this section shall be considered as sufficient for the showing necessary under this subsection. If the Commission finds that the channel capacity sought by such person has not been made available in accordance with this section, or that the price, terms, or conditions established by such system are unreasonable under subsection (c), the Commission shall, by rule or order, require such operator to make available such channel capacity under price, terms, and conditions consistent with subsection (c).

(2) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by an operator, the Commission may also establish any further rule or order necessary to assure that the operator provides the diversity of information sources required by this section.

(3) In any case in which the Commission finds that the prior adjudicated violations of this section constitute a pattern or practice of violations by any person who is an operator of more than one cable system, the Commission may also establish any further rule or order necessary to assure that such person provides the diversity of information sources required by this section.

(f) In any action brought under this section in any Federal district court or before the Commission, there shall be a presumption that the price, terms, and conditions for use of channel capacity designated pursuant to subsection (b) are reasonable and in good faith unless shown by clear and convincing evidence to the contrary.

(g) Notwithstanding sections 621(c) and 623(a), at such time as cable systems with 36 or more activated channels are available to

70 percent of households within the United States and are subscribed to by 70 percent of the households to which such systems are available, the Commission may promulgate any additional rules necessary to provide diversity of information sources. Any rules promulgated by the Commission pursuant to this subsection shall not preempt authority expressly granted to franchising authorities under this title.

(h) Any cable service offered pursuant to this section shall not be provided, or shall be provided subject to conditions, if such cable service in the judgment of the franchising authority or the cable operator is obscene, or is in conflict with community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the United States. This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

(i)(1) Notwithstanding the provisions of subsections (b) and (c), a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming source or from any qualified educational programming source, whether or not such source is affiliated with the cable operator. The channel capacity used to provide programming from a qualified minority programming source or from any qualified educational programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming or educational programming on that cable system under this subsection.

(2) For purposes of this subsection, the term "qualified minority programming source" means a programming source which devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned, as the term "minority" is defined in section 309(i)(3)(C)(ii).

(3) For purposes of this subsection, the term "qualified educational programming source" means a programming source which devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding $15,000,000. The annual expenditure on programming means all annual costs incurred by the programming source to produce or acquire programs which are scheduled to be televised, and specifically excludes marketing, promotion, satellite transmission and operational costs, and general administrative costs.

(4) Nothing in this subsection shall substitute for the requirements to carry qualified noncommercial educational television stations as specified under section 615.

(j)(1) Within 120 days following the date of the enactment of this subsection, the Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined

by Commission regulations, and which cable operators have not voluntarily prohibited under subsection (h) by—

(A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section;

(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing; and

(C) requiring programmers to inform cable operators if the program would be indecent as defined by Commission regulations.

(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1).

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PART III—FRANCHISING AND REGULATION

SEC. 621. GENERAL FRANCHISE REQUIREMENTS.

(a)(1) A franchising authority may award, in accordance with the provisions of this title, 1 or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise. Any applicant whose application for a second franchise has been denied by a final decision of the franchising authority may appeal such final decision pursuant to the provisions of section 635 for failure to comply with this subsection.

(2) Any franchise shall be construed to authorize the construction of a cable system over public rights-of-way, and through easements, which is within the area to be served by the cable system and which have been dedicated for compatible uses, except that in using such easements the cable operator shall ensure—

(A) that the safety, functioning, and appearance of the property and the convenience and the safety of other persons not be adversely affected by the installation or construction of facilities necessary for a cable system;

(B) that the cost of the installation, construction, operation, or removal of such facilities be borne by the cable operator or subscriber, or a combination of both; and

(C) that the owner of the property be justly compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of such facilities by the cable operator.

(3) In awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

(4) In awarding a franchise, the franchising authority—

(A) shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area;

(B) may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and

(C) may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.

(b)(1) Except to the extent provided in paragraph (2) and subsection (f), a cable operator may not provide cable service without a franchise.

(2) Paragraph (1) shall not require any person lawfully providing cable service without a franchise on July 1, 1984, to obtain a franchise unless the franchising authority so requires.

(3)(A) If a cable operator or affiliate thereof is engaged in the provision of telecommunications services—

(i) such cable operator or affiliate shall not be required to obtain a franchise under this title for the provision of telecommunications services; and

(ii) the provisions of this title shall not apply to such cable operator or affiliate for the provision of telecommunications services.

(B) A franchising authority may not impose any requirement under this title that has the purpose or effect of prohibiting, limiting, restricting, or conditioning the provision of a telecommunications service by a cable operator or an affiliate thereof.

(C) A franchising authority may not order a cable operator or affiliate thereof—

(i) to discontinue the provision of a telecommunications service, or

(ii) to discontinue the operation of a cable system, to the extent such cable system is used for the provision of a telecommunications service, by reason of the failure of such cable operator or affiliate thereof to obtain a franchise [or franchise renewal] under this title with respect to the provision of such telecommunications service.

(D) Except as otherwise permitted by sections 611 and 612, a franchising authority may not require a cable operator to provide any telecommunications service or facilities, other than institutional networks, as a condition of the [initial] grant of a franchise[, a franchise renewal,] or a transfer of a franchise.

(c) Any cable system shall not be subject to regulation as a common carrier or utility by reason of providing any cable service.

(d)(1) A State or the Commission may require the filing of informational tariffs for any intrastate communications service provided by a cable system, other than cable service, that would be subject to regulation by the Commission or any State if offered by a common carrier subject in whole or in part, to title II of this Act. Such informational tariffs shall specify the rates, terms, and conditions for the provision of such service, including whether it is made available to all subscribers generally, and shall take effect on the date specified therein.

(2) Nothing in this title shall be construed to affect the authority of any State to regulate any cable operator to the extent that such operator provides any communication service other than cable service, whether offered on a common carrier or private contract basis.

(3) For purposes of this subsection, the term "State" has the meaning given it in section 3.

(e) Nothing in this title shall be construed to affect the authority of any State to license or otherwise regulate any facility or com-

bination of facilities which serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management and which does not use any public right-of-way.

(f) No provision of this Act shall be construed to—

(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the franchise area, notwithstanding the granting of one or more franchises by such franchising authority; or

(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.

(g) TIMING OF DECISION ON REQUEST FOR FRANCHISE.—

(1) IN GENERAL.—Not later than 120 days after the date on which a requesting party submits to a franchising authority a request for the grant of a franchise (other than a renewal thereof), the franchising authority shall approve or deny such request.

(2) DEEMED GRANT OF NEW FRANCHISE.—If the franchising authority does not approve or deny a request under paragraph (1) by the day after the date on which the time period ends under such paragraph, such request shall be deemed granted on such day.

(3) APPLICABILITY.—Notwithstanding any provision of this title, the timeframe under paragraph (1) shall apply collectively to all proceedings required by a franchising authority for the approval of the request.

(4) NO MORITORIA.—A timeframe under paragraph (1) may not be tolled by any moratorium, whether express or de facto, imposed by a franchising authority on the consideration of any request for a franchise.

(5) TOLLING DUE TO INCOMPLETENESS.—

(A) INITIAL REQUEST INCOMPLETE.—If, not later than 30 days after the date on which a requesting party provides to a franchising authority a written notice described in subparagraph (C) with respect to the request, the timeframe described in paragraph (1) is tolled with respect to the request until the date on which the requesting party submits to the franchising authority a supplemental submission in response to the notice.

(B) SUPPLEMENTAL SUBMISSION INCOMPLETE.—If, not later than 10 days after the date on which a requesting party submits to the franchising authority a supplemental submission in response to a written notice described in subparagraph (A), the franchising authority provides to the requesting party a written notice described in subparagraph (A) with respect to the supplemental submission, the timeframe under paragraph (1) is further tolled until the date on which the requesting party submits to the franchising authority a subsequent supplemental submission in response to the notice.

(C) WRITTEN NOTICE DESCRIBED.—The written notice described in this paragraph is, with respect to a request described in paragraph (1) or a supplemental submission described in subparagraph (A) or (B) submitted to a fran-

chising authority by a requesting party, a written notice from the franchising authority to the requesting party—

(i) stating that all of the information (including any form or other document) required by the franchising authority to be submitted for the request to be considered complete has not been submitted;

(ii) identifying the information described in clause (i) that was not submitted; and

(iii) including a citation to a specific provision of a publicly available rule, regulation, or standard issued by the franchising authority requiring that such information be submitted with such a request.

(D) LIMITATION ON SUBSEQUENT WRITTEN NOTICE.—If a written notice provided by a franchising authority to a requesting party under subparagraph (A) with respect to a supplemental submission identifies as not having been submitted any information that was not identified as not having been submitted in the prior written notice under this subparagraph in response to which the supplemental submission was submitted, the subsequent written notice shall be treated as not having been provided to the requesting party.

(6) TOLLING BY MUTUAL AGREEMENT.—The timeframe under paragraph (1) may be tolled by mutual agreement between the franchising authority and the requesting party.

(7) WRITTEN DECISION AND RECORD.—Any decision by a franchising authority to deny a request for a franchise shall be—

(A) in writing;

(B) supported by substantial evidence contained in a written record; and

(C) publicly released, and provided to the requesting party, on the same day such decision is made.

(8) WHEN REQUEST CONSIDERED SUBMITTED.—For the purposes of this subsection, a request to a franchising authority shall be considered submitted on the date on which the requesting party takes the first procedural step within the control of the requesting party—

(A) to submit such request in accordance with the procedures established by the franchising authority for the review and approval of such a request; or

(B) in the case of a franchising authority that has not established specific procedures for the review and approval of such a request, to submit to the franchising authority the type of filing that is typically required to initiate a standard review for a request related to a franchise.

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SEC. 624. REGULATION OF SERVICES, FACILITIES, AND EQUIPMENT.

(a) Any franchising authority may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with this title.

(b) In the case of any franchise granted after the effective date of this title, the franchising authority, to the extent related to the establishment or operation of a cable system—

(1) in its request for proposals for a franchise [(including requests for renewal proposals, subject to section 626)], may establish requirements for facilities and equipment, but may not, except as provided in subsection (h), establish requirements for video programming or other information services; and

(2) subject to section 625, may enforce any requirements contained within the franchise—

(A) for facilities and equipment; and

(B) for broad categories of video programming or other services.

(c) In the case of any franchise in effect on the effective date of this title, the franchising authority may, subject to section 625, enforce requirements contained within the franchise for the provision of services, facilities, and equipment, whether or not related to the establishment or operation of a cable system.

(d)(1) Nothing in this title shall be construed as prohibiting a franchising authority and a cable operator from specifying, in a franchise [or renewal thereof], that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the Constitution of the United States.

(2) In order to restrict the viewing of programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

(3)(A) If a cable operator provides a premium channel without charge to cable subscribers who do not subscribe to such premium channel, the cable operator shall, not later than 30 days before such premium channel is provided without charge—

(i) notify all cable subscribers that the cable operator plans to provide a premium channel without charge;

(ii) notify all cable subscribers when the cable operator plans to offer a premium channel without charge;

(iii) notify all cable subscribers that they have a right to request that the channel carrying the premium channel be blocked; and

(iv) block the channel carrying the premium channel upon the request of a subscriber.

(B) For the purpose of this section, the term "premium channel" shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association of America as X, NC–17, or R.

(e) Within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission shall prescribe regulations which establish minimum technical standards relating to cable systems' technical operation and signal quality. The Commission shall update such standards periodically to reflect improvements in technology. No State or franchising authority may prohibit, condition, or restrict a cable system's use of any type of subscriber equipment or any transmission technology.

(f)(1) Any Federal agency, State, or franchising authority may not impose requirements regarding the provision or content of cable services, except as expressly provided in this title.

(2) Paragraph (1) shall not apply to—

(A) any rule, regulation, or order issued under any Federal law, as such rule, regulation, or order (i) was in effect on September 21, 1983, or (ii) may be amended after such date if the rule, regulation, or order as amended is not inconsistent with the express provisions of this title; and

(B) any rule, regulation, or order under title 17, United States Code.

(g) Notwithstanding any such rule, regulation, or order, each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations in subpart G of part 73, title 47, Code of Federal Regulations.

(h) A franchising authority may require a cable operator to do any one or more of the following:

(1) Provide 30 days' advance written notice of any change in channel assignment or in the video programming service provided over any such channel.

(2) Inform subscribers, via written notice, that comments on programming and channel position changes are being recorded by a designated office of the franchising authority.

(i) Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.

(j) REQUEST REGARDING PLACEMENT, CONSTRUCTION, OR MODIFICATION OF FACILITIES.—

(1) NO EFFECT ON AUTHORITY OF CERTAIN ENTITIES.—Except as provided in this subsection, nothing in this title shall limit or affect the authority of a covered entity over—

(A) decisions regarding the placement, construction, or modification of covered equipment within the jurisdiction of such covered entity; or

(B) safety standards for the placement, construction, or modification of such covered equipment.

(2) LIMITATIONS.—

(A) ABILITY TO PROVIDE OR ENHANCE SERVICE.—With respect to the regulation by a covered entity of the placement, construction, or modification of covered equipment, the covered entity shall not prohibit or have the effect of prohibiting the ability of a cable operator to provide, improve, or enhance the provision of service using covered equipment under a franchise granted by such covered entity, or within the jurisdiction of such covered entity, as so may be the case.

(B) TIMING OF DECISIONS ON REQUESTS FOR AUTHORIZATIONS TO PLACE, CONSTRUCT, OR MODIFY FACILITY.—

(i) TIMEFRAME.—A covered entity shall approve or deny a request for authorization to place, construct, or modify covered equipment not later than—

(I) if the request is for authorization to place, construct, or modify covered equipment in or on a

covered easement or eligible support infrastructure, 90 days after the date on which requesting party submits the request to the covered entity; or

(II) if the request is not for authorization to place, construct, or modify covered equipment in or on a covered easement or eligible support infrastructure, 150 days after the date on which the requesting party submits the request to the covered entity.

(ii) DEEMED GRANTED.—If a covered entity fails to grant or deny a request by the applicable timeframe under clause (i), the request shall be deemed granted and authorized on the date on which the covered entity receives written notice of the failure from the requesting party.

(iii) APPLICABILITY.—Notwithstanding any provision of this title, the applicable timeframe under clause (i) shall apply collectively to all proceedings required by a covered entity for the approval of the request.

(iv) NO MORITORIA.—A timeframe under clause (i) may not be tolled by any moratorium, whether express or de facto, imposed by a covered entity on the consideration of any request for authorization to place, construct, or modify covered equipment.

(v) TOLLING DUE TO INCOMPLETENESS.—

(I) INITIAL REQUEST INCOMPLETE.—If, not later than 30 days after the date on which a requesting party submits to a covered entity a request for authorization to place, construct, or modify covered equipment, the covered entity provides to the requesting party a written notice described in subclause (III) with respect to the request, the timeframe described in clause (i) is tolled with respect to the request until the date on which the requesting party submits to the covered entity a supplemental submission in response to the notice.

(II) SUPPLEMENTAL SUBMISSION INCOMPLETE.—If, not later than 10 days after the date on which a requesting party submits to the covered entity a supplemental submission in response to a written notice described in subclause (III), the covered entity provides to the requesting party a written notice described in subclause (III) with respect to the supplemental submission, the timeframe under clause (i) is further tolled until the date on which the requesting party submits to the covered entity a subsequent supplemental submission in response to the notice.

(III) WRITTEN NOTICE DESCRIBED.—The written notice described in this subclause is, with respect to a request described in clause (i) or a supplemental submission described in subclause (I) or (II) submitted to a covered entity by a requesting party, a written notice from the requesting party to the covered entity—

(aa) stating that all of the information (including any form or other document) required by the covered entity to be submitted for the request to be considered complete has not been submitted;

(bb) identifying the information described in item (aa) that was not submitted; and

(cc) including a citation to a specific provision of a publicly available rule, regulation, or standard issued by the covered entity requiring that such information be submitted with such a request.

(IV) LIMITATION ON SUBSEQUENT WRITTEN NOTICE.—If a written notice provided by covered entity to a requesting party under subclause (I) with respect to a supplemental submission identifies as not having been submitted any information that was not identified as not having been submitted in the prior written notice under this subparagraph in response to which the supplemental submission was submitted, the subsequent written notice shall be treated as not having been provided to the requesting party.

(vi) TOLLING BY MUTUAL AGREEMENT.—The timeframe under clause (i) may be tolled by mutual agreement between the covered entity and the requesting party.

(vii) WRITTEN DECISION AND RECORD.—Any decision by a covered entity to deny a request for authorization to place, construct, or modify covered equipment shall be—

(I) in writing;

(II) supported by substantial evidence contained in a written record; and

(III) publicly released, and provided to the requesting party, on the same day such decision is made.

(viii) WHEN REQUEST CONSIDERED SUBMITTED.—For the purposes of this subparagraph, a request to a covered entity shall be considered submitted on the date on which the requesting party takes the first procedural step within the control of the requesting party—

(I) to submit such request in accordance with the procedures established by the covered entity for the review and approval of such a request; or

(II) in the case of a covered entity that has not established specific procedures for the review and approval of such a request, to submit to the covered entity the type of filing that is typically required to initiate a standard review for a similar request in a jurisdiction that has not established specific procedures for the relevant review and approval of such a request.

(3) FEES.—

(A) IN GENERAL.—A covered entity may charge a fee that meets the requirements under subparagraph (B) to consider a request for authorization to place, construct, or modify covered equipment.

(B) REQUIREMENTS.—A fee charged under subparagraph (A) shall be—

(i) competitively neutral, technology neutral, and nondiscriminatory;

(ii) established and publicly disclosed in advance;

(iii) calculated—

(I) based on actual and direct costs for—

(aa) review and processing of requests; and

(bb) repairs and replacement of—

(AA) components and materials directly resulting from and affected by the placement, construction, or modification of the covered equipment (including components and materials directly resulting from and affected by the installation of covered equipment or, with respect to the placement, construction, or modification of the covered equipment, the improvement of an eligible support infrastructure); or

(BB) equipment that facilitates the repair and replacement of such components and materials;

(II) using, for purposes of subclause (I), only costs that are objectively reasonable; and

(III) described to a requesting party in a manner that distinguishes between nonrecurring fees and recurring fees.

(C) NO RELATION TO FRANCHISE FEES.—A fee charged under this paragraph to consider a request for authorization to place, construct, or modify covered equipment may not be considered a franchise fee under section 622.

(4) DEFINITIONS.—In this subsection:

(A) COVERED EASEMENT.—The term "covered easement" means an easement or public right-of-way that exists at the time when a request to a covered entity for authorization to place, construct, or modify the covered equipment in or on the easement or public right-of-way is submitted to the covered entity.

(B) COVERED EQUIPMENT.—The term "covered equipment" means equipment used in or attached to a cable system to provide service through such system.

(C) COVERED ENTITY.—The term "covered entity" means:

(i) A State.

(ii) A local government.

(iii) An instrumentality of a State or a local government.

(iv) A franchising authority.

(D) ELIGIBLE SUPPORT INFRASTRUCTURE.—The term "eligible support infrastructure" means infrastructure that supports or houses a facility for communication by wire (or that is designed for or capable of supporting or housing

such a facility) at the time when a request to a covered entity for authorization to place, construct, or modify covered equipment in or on the infrastructure is submitted to the covered entity.

* * * * * * *

[SEC. 625. MODIFICATION OF FRANCHISE OBLIGATIONS.

[(a)(1) During the period a franchise is in effect, the cable operator may obtain from the franchising authority modifications of the requirements in such franchise—

[(A) in the case of any such requirement for facilities or equipment, including public, educational, or governmental access facilities or equipment, if the cable operator demonstrates that (i) it is commercially impracticable for the operator to comply with such requirement, and (ii) the proposal by the cable operator for modification of such requirement is appropriate because of commercial impracticability; or

[(B) in the case of any such requirement for services, if the cable operator demonstrates that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

[(2) Any final decision by a franchising authority under this subsection shall be made in a public proceeding. Such decision shall be made within 120 days after receipt of such request by the franchising authority, unless such 120-day period is extended by mutual agreement of the cable operator and the franchising authority.

[(b)(1) Any cable operator whose request for modification under subsection (a) has been denied by a final decision of a franchising authority may obtain modification of such franchise requirements pursuant to the provisions of section 635.

[(2) In the case of any proposed modification of a requirement for facilities or equipment, the court shall grant such modification only if the cable operator demonstrates to the court that—

[(A) it is commercially impracticable for the operator to comply with such requirement; and

[(B) the terms of the modification requested are appropriate because of commercial impracticability.

[(3) In the case of any proposed modification of a requirement for services, the court shall grant such modification only if the cable operator demonstrates to the court that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

[(c) Notwithstanding subsections (a) and (b), a cable operator may, upon 30 days' advance notice to the franchising authority, rearrange, replace, or remove a particular cable service required by the franchise if—

[(1) such service is no longer available to the operator; or

[(2) such service is available to the operator only upon the payment of a royalty required under section 801(b)(2) of title 17, United States Code, which the cable operator can document—

[(A) is substantially in excess of the amount of such payment required on the date of the operator's offer to provide such service, and

[(B) has not been specifically compensated for through a rate increase or other adjustment.

[(d) Notwithstanding subsections (a) and (b), a cable operator may take such actions to rearrange a particular service from one service tier to another, or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulation under section 623.

[(e) A cable operator may not obtain modification under this section of any requirement for services relating to public, educational, or governmental access.

[(f) For purposes of this section, the term "commercially impracticable" means, with respect to any requirement applicable to a cable operator, that it is commercially impracticable for the operator to comply with such requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based.

[SEC. 626. RENEWAL.

[(a)(1) A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term. If the cable operator submits, during such 6-month period, a written renewal notice requesting the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted.

[(2) The cable operator may not invoke the renewal procedures set forth in subsections (b) through (g) unless—

[(A) such a proceeding is requested by the cable operator by timely submission of such notice; or

[(B) such a proceeding is commenced by the franchising authority on its own initiative.

[(b)(1) Upon completion of a proceeding under subsection (a), a cable operator seeking renewal of a franchise may, on its own initiative or at the request of a franchising authority, submit a proposal for renewal.

[(2) Subject to section 624, any such proposal shall contain such material as the franchising authority may require, including proposals for an upgrade of the cable system.

[(3) The franchising authority may establish a date by which such proposal shall be submitted.

[(c)(1) Upon submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise pursuant to subsection (b), the franchising authority shall provide prompt public notice of such proposal and, during the 4-month period which begins on the date of the submission of the cable operator's proposal pursuant to subsection (b), renew the franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public

notice of such proceeding, in accordance with paragraph (2) to consider whether—

[(A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

[(B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;

[(C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

[(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

[(2) In any proceeding under paragraph (1), the cable operator shall be afforded adequate notice and the cable operator and the franchise authority, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (a)), to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

[(3) At the completion of a proceeding under this subsection, the franchising authority shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor.

[(d) Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection (c)(1), pursuant to the record of the proceeding under subsection (c). A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (c)(1)(A) or on events considered under subsection (c)(1)(B) in any case in which a violation of the franchise or the events considered under subsection (c)(1)(B) occur after the effective date of this title unless the franchising authority has provided the operator with notice and the opportunity to cure, or in any case in which it is documented that the franchising authority has waived its right to object, or the cable operator gives written notice of a failure or inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice.

[(e)(1) Any cable operator whose proposal for renewal has been denied by a final decision of a franchising authority made pursuant to this section, or has been adversely affected by a failure of the franchising authority to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of section 635.

[(2) The court shall grant appropriate relief if the court finds that—

[(A) any action of the franchising authority, other than harmless error, is not in compliance with the procedural requirements of this section; or

[(B) in the event of a final decision of the franchising authority denying the renewal proposal, the operator has demonstrated that the adverse finding of the franchising authority with respect to each of the factors described in subparagraphs (A) through (D) of subsection (c)(1) on which the denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted under subsection (c).

[(f) Any decision of a franchising authority on a proposal for renewal shall not be considered final unless all administrative review by the State has occurred or the opportunity therefor has lapsed.

[(g) For purposes of this section, the term "franchise expiration" means the date of the expiration of the term of the franchise, as provided under the franchise, as it was in effect on the date of the enactment of this title.

[(h) Notwithstanding the provisions of subsections (a) through (g) of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections (a) through (g) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (a) through (g).

[(i) Notwithstanding the provisions of subsections (a) through (h), any lawful action to revoke a cable operator's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the cable operator under this section.

[SEC. 627. CONDITIONS OF SALE.

[(a) If a renewal of a franchise held by a cable operator is denied and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be—

[(1) at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself, or

[(2) in the case of any franchise existing on the effective date of this title, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.

[(b) If a franchise held by a cable operator is revoked for cause and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be—

[(1) at an equitable price, or

[(2) in the case of any franchise existing on the effective date of this title, at a price determined in accordance with the franchise if such franchise contains provisions applicable to such an acquisition or transfer.]

SEC. 625. ELIMINATION OR MODIFICATION OF REQUIREMENT IN FRANCHISE.

(a) IN GENERAL.—During the period in which a franchise is in effect, the cable operator may obtain the elimination or modification of any requirement in the franchise by submitting to the franchising authority a request for the elimination or modification of such requirement.

(b) ELIMINATION OR MODIFICATION OF REQUIREMENT IN FRANCHISE.—

(1) REQUIREMENT.—The franchising authority shall eliminate or modify a requirement in accordance with a request submitted under subsection (a) not later than 120 days after the cable operator submits the request to the franchising authority if the cable operator demonstrates in the request—

(A) good cause for the elimination or modification of the requirement, including the need to eliminate or modify the requirement—

(i) to conform to an applicable Federal or State law;

(ii) to address changes in technology; or

(iii) in the case of a requirement applicable to the cable operator, due to commercial impracticability; and

(B) that the mix, quality, and level of cable services required by the franchise at the time the franchise was granted will be maintained notwithstanding the elimination or modification of the requirement;

(2) DEFINITION.—In this subsection, the term "commercial impracticability" means that it is commercially impracticable for the operator to comply with the requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based.

(c) DEEMED ELIMINATION OR MODIFICATION.—Except in the case of a request for the elimination or modification of a requirement for services relating to public, educational, or governmental access, if the franchising authority fails to approve or deny the request submitted under subsection (a) by the date described under subsection (b), the requirement shall be deemed eliminated or modified in accordance with the request on the day after such date.

(d) APPEAL.—

(1) IN GENERAL.—Any cable operator whose request for elimination or modification of a requirement in a franchise under subsection (a) has been denied by a final decision of a franchising authority may seek judicial review of the decision pursuant to the provisions of section 635.

(2) GRANT OF REQUEST.—In the case of any proposed elimination or modification of a requirement in a franchise under subsection (a), the court shall grant such elimination or modification only if the cable operator demonstrates to the court that the standards in subsection (b) have been met.

(e) WHEN REQUEST CONSIDERED SUBMITTED.—For the purposes of this section, a request to a franchising authority shall be considered submitted on the date on which the requesting party takes the first procedural step within the control of the requesting party—

(1) to submit such request in accordance with the procedures established by the franchising authority for the review and approval of such a request; or

(2) in the case of a franchising authority that has not established specific procedures for the review and approval of such a request, to submit to the franchising authority the type of filing that is typically required to initiate a standard review for a request related to a franchise.

SEC. 626. FRANCHISE TERM AND TERMINATION.

(a) FRANCHISE TERM.—A franchise shall continue in effect (without any requirement for renewal) until the date on which the franchise is revoked or terminated in accordance with subsection (b).

(b) LIMITS.—

(1) PROHIBITION AGAINST REVOCATION; TERMINATION.—Except as provided in paragraph (2), a franchise may not be—

(A) revoked by a franchising authority;

(B) terminated by a cable operator; or

(C) revoked or terminated by operation of law, including by a term in a franchise that revokes or terminates such franchise on a specific date, after a period of time, or upon the occurrence of an event.

(2) WHEN TERMINATION OR REVOCATION OF FRANCHISE PERMITTED.—

(A) TERMINATION BY CABLE OPERATOR.—

(i) IN GENERAL.—A cable operator may terminate a franchise by submitting to the franchising authority a written request for the franchising authority to revoke such franchise.

(ii) TIME OF REVOCATION.—If the cable operator submits a written request under clause (i), the franchising authority shall revoke the franchise on the date that is 90 days after the request is submitted to the franchising authority.

(iii) DEEMED TO BE REVOKED.—If a franchising authority does not approve a request by the date required under clause (ii), the franchise is deemed revoked on the day after such date.

(B) TERMINATION BY FRANCHISING AUTHORITY.—A franchising authority may revoke a franchise if the franchising authority—

(i) finds that the cable operator has knowingly and willfully failed to substantially meet a material requirement imposed by the franchise;

(ii) provides the cable operator a reasonable opportunity to cure such failure, after which the cable operator fails to cure such failure; and

(iii) does not waive the material requirement or acquiesce with the failure to substantially meet such requirement.

(c) REVIEW OF REVOCATION OF FRANCHISE BY FRANCHISING AUTHORITY.—

(1) ADMINISTRATIVE OR JUDICIAL REVIEW.—With respect to a determination by a franchising authority to revoke a franchise under subsection (b)(2)(B), a cable operator may—

(A) petition the Commission for review of such determination; or

(B) seek judicial review of such determination pursuant to the provisions of section 635.

(2) COMMISSION REVIEW.—With respect to a petition for the review of a determination brought under paragraph (1)(A), the Commission shall—

(A) review the determination de novo; and

(B) invalidate the determination if, based on the evidence presented during the review, the Commission determines that the franchising authority has not demonstrated by a preponderance of the evidence that the franchising authority revoked the franchise in accordance with subsection (b)(2)(B).

(3) STAY OF DETERMINATION TO REVOKE FRANCHISE.—A revocation of a franchise under subsection (b)(2)(B) may be stayed—

(A) in the case the cable operator petitions the Commission for review of the determination on which such revocation is based, by the Commission; and

(B) in the case the cable operator seeks judicial review of the determination on which such revocation is based, by the court in which the cable operator seeks judicial review of the determination.

SEC. 627. CONDITIONS OF SALE OR TRANSFER.

(a) VALUE OF CABLE SYSTEM AFTER REVOCATION OF FRANCHISE.—If a franchise held by a cable operator is revoked under section 626(b)(2)(B) and the franchising authority acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at fair market value.

(b) LIMITATIONS ON AUTHORITY OF FRANCHISING AUTHORITY WITH RESPECT TO TRANSFER OF FRANCHISE.—

(1) IN GENERAL.—A franchising authority may not preclude a cable operator from transferring a franchise to any person—

(A) to which such franchise was not initially granted; and

(B) with respect to the terms of the franchise that apply to the cable operator, who agrees to accept all such terms in effect at the time of the transfer.

(2) NOTIFICATION.—In the case of the transfer of a franchise to a person to which such franchise was not originally granted, a franchising authority may require a cable operator to which a franchise was initially granted to, not later than 15 days before the transfer of the franchise, notify the franchising authority in writing of such transfer.

(3) TRANSFER OF A FRANCHISE DEFINED.—In this subsection, the term "transfer of a franchise" means the transfer or assignment of any rights under a franchise through any transaction, including through—

(A) a merger involving the cable operator or cable system;

(B) a sale of the cable operator or cable system;

(C) an assignment of the cable operator or a cable system;

(D) a restructuring of a cable operator or a cable system; or

(E) the transfer of control of a cable operator or a cable system.

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PART IV—MISCELLANEOUS PROVISIONS

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SEC. 635A. LIMITATION OF FRANCHISING AUTHORITY LIABILITY.

(a) SUITS FOR DAMAGES PROHIBITED.—In any court proceeding pending on or initiated after the date of enactment of this section involving any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, arising from the regulation of cable service or from a decision of approval or disapproval with respect to a grant, [renewal,] transfer, or amendment of a franchise, any relief, to the extent such relief is required by any other provision of Federal, State, or local law, shall be limited to injunctive relief and declaratory relief.

(b) EXCEPTION FOR COMPLETED CASES.—The limitation contained in subsection (a) shall not apply to actions that, prior to such violation, have been determined by a final order of a court of binding jurisdiction, no longer subject to appeal, to be in violation of a cable operator's rights.

(c) DISCRIMINATION CLAIMS PERMITTED.—Nothing in this section shall be construed as limiting the relief authorized with respect to any claim against a franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity, to the extent such claim involves discrimination on the basis of race, color, sex, age, religion, national origin, or handicap.

(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as creating or authorizing liability of any kind, under any law, for any action or failure to act relating to cable service or the granting of a franchise by any franchising authority or other governmental entity, or any official, member, employee, or agent of such authority or entity.

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MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012

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TITLE VI—PUBLIC SAFETY COMMUNICATIONS AND ELECTROMAGNETIC SPECTRUM AUCTIONS

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Subtitle D—Spectrum Auction Authority

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SEC. 6409. [WIRELESS] *COMMUNICATIONS* FACILITIES DEPLOYMENT.

(a) FACILITY MODIFICATIONS.—

(1) IN GENERAL.—Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, [a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.] *a State or local government or instrumentality thereof may not deny, and shall approve—*

(A) any eligible facilities request for a modification of an existing wireless tower, base station, or eligible support structure that does not substantially change the physical dimensions of such wireless tower, base station, or eligible support structure; and

(B) any eligible telecommunications facilities request for a modification of an existing telecommunications service facility in or on eligible support infrastructure that does not substantially change the physical dimensions of such facility.

[(2) ELIGIBLE FACILITIES REQUEST.—For purposes of this subsection, the term "eligible facilities request" means any request for modification of an existing wireless tower or base station that involves—

[(A) collocation of new transmission equipment;

[(B) removal of transmission equipment; or

[(C) replacement of transmission equipment.

[(3) APPLICABILITY OF ENVIRONMENTAL LAWS.—Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.]

(2) TIMEFRAME.—

(A) DEEMED APPROVAL.—

(i) IN GENERAL.—If a State or local government or instrumentality thereof does not, before or on the date that is 60 days after the date on which a requesting party submits to the government or instrumentality a request as an eligible facilities request or an eligible telecommunications facilities request (as the case may be), approve the request or make the determination and provide the written notice described in subparagraph (B) with respect to the request, the request is deemed approved on the day after the date that is 60 days after the date on which the requesting party submits the request.

(ii) RULE OF CONSTRUCTION.—In the case of a request that is deemed approved under clause (i), the modification requested in the request shall be authorized, without any further action by the government or instrumentality, beginning on the date on which the request is deemed approved under such clause.

(B) DETERMINATION REQUEST IS NOT AN ELIGIBLE REQUEST.—

(i) DETERMINATION DESCRIBED.—The determination described in this subparagraph is a determination by a State or local government or instrumentality thereof that a request described in subparagraph (A)(i) is not an eligible facilities request or an eligible telecommunications facilities request (as the case may be).

(ii) WRITTEN NOTICE DESCRIBED.—The written notice described in this subparagraph is a written notice of the determination described in clause (i) provided by the government or instrumentality to the requesting party that clearly describes the reasons why the request is not an eligible facilities request or an eligible telecommunications facilities request (as the case may be) and includes a citation to a specific provision of this subsection or the regulations promulgated under this subsection relied upon for the determination.

(C) TOLLING DUE TO INCOMPLETENESS.—

(i) INITIAL REQUEST INCOMPLETE.—If, not later than 30 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a request described in subparagraph (A)(i), the government or instrumentality provides to the requesting party a written notice described in clause (iii) with respect to the request, the 60-day timeframe under subparagraph (A)(i) is tolled until the date on which the requesting party submits to the government or instrumentality a supplemental submission in response to the notice.

(ii) SUPPLEMENTAL SUBMISSION INCOMPLETE.—If, not later than 10 days after the date on which a requesting party submits to a State or local government or instrumentality thereof a supplemental submission in response to a written notice described in clause (iii), the government or instrumentality provides to the requesting party a written notice described in clause (iii) with respect to the supplemental submission, the 60-day timeframe under subparagraph (A)(i) is further tolled until the date on which the requesting party submits to the government or instrumentality a subsequent supplemental submission in response to the notice.

(iii) WRITTEN NOTICE DESCRIBED.—The written notice described in this clause is, with respect to a request described in subparagraph (A)(i) or a supplemental submission described in clause (i) or (ii) submitted to a State or local government or instrumentality thereof by a requesting party, a written notice from the government or instrumentality to the requesting party—

(I) stating that all of the information (including any form or other document) required by the government or instrumentality to be submitted for the request to be considered complete has not been submitted;

(II) identifying the information described in subclause (I) that was not submitted; and

(III) including a citation to a specific provision of a publicly available rule, regulation, or standard issued by the government or instrumentality requiring that such information be submitted with such a request.

(iv) LIMITATION.—

(I) INITIAL WRITTEN NOTICE.—If a written notice provided by a State or local government or instrumentality thereof to a requesting party under clause (i) with respect to a request described in subparagraph (A)(i) identifies as not having been submitted any information that the government or instrumentality is prohibited by paragraph (5) from requiring to be submitted, such notice shall be treated as not having been provided to the requesting party.

(II) SUBSEQUENT WRITTEN NOTICE.—If a written notice provided by a State or local government or instrumentality thereof to a requesting party under clause (ii) with respect to a supplemental submission identifies as not having been submitted any information that was not identified as not having been submitted in the prior written notice under this subparagraph in response to which the supplemental submission was submitted, the subsequent written notice shall be treated as not having been provided to the requesting party.

(D) TOLLING BY MUTUAL AGREEMENT.—The 60-day timeframe under subparagraph (A)(i) may be tolled by mutual agreement between the State or local government or instrumentality thereof and the requesting party.

(3) APPLICATION OF NEPA; NHPA.—

(A) NEPA EXEMPTION.—A Federal authorization with respect to an eligible facilities request or an eligible telecommunications facilities request may not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(B) NATIONAL HISTORIC PRESERVATION ACT EXEMPTION.—An eligible facilities request or an eligible telecommunications facilities request may not be considered an undertaking under section 300320 of title 54, United States Code.

(C) FEDERAL AUTHORIZATION DEFINED.—In this paragraph, the term "Federal authorization"—

(i) means any authorization required under Federal law with respect to an eligible facilities request or an eligible telecommunications facilities request; and

(ii) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law with respect to an eligible facilities request or an eligible telecommunications facilities request.

(4) WHEN REQUEST CONSIDERED SUBMITTED.—

(A) IN GENERAL.—For the purposes of this subsection, a request described in paragraph (2)(A)(i) shall be considered submitted on the date on which the requesting party takes the first procedural step within the control of the requesting party—

(i) to submit such request in accordance with the procedures established by the government or instrumentality for the review and approval of such a request; or

(ii) in the case of a government or instrumentality that has not established specific procedures for the review and approval of such a request, to submit to the government or instrumentality the type of filing that is typically required to initiate a standard review for a similar facility or structure.

(B) NO PRE-APPLICATION REQUIREMENTS.—A State or local government or instrumentality thereof may not require a requesting party to undertake any process, meeting, or other step prior to or as a prerequisite to a request being considered submitted.

(5) LIMITATION ON REQUIRED DOCUMENTATION.—A State or local government or instrumentality thereof may require a requesting party submitting a request as an eligible facilities request or an eligible telecommunications facilities request to submit information (including a form or other document) with such request only to the extent that such information is reasonably related to determining whether such request is an eligible facilities request or an eligible telecommunications facilities request (as the case may be) and is identified in a publicly available rule, regulation, or standard issued by the government or instrumentality requiring that such information be submitted with such a request. A State or local government or instrumentality thereof may not require a requesting party to submit any other documentation or information with such a request.

(6) ENFORCEMENT.—

(A) IN GENERAL.—A requesting party may bring an action in any district court of the United States to enforce the provisions of this subsection.

(B) EXPEDITED REVIEW.—A district court of the United States shall consider an action under subparagraph (A) on an expedited basis.

(7) DEFINITIONS.—In this subsection:

(A) ELIGIBLE FACILITIES REQUEST.—The term "eligible facilities request" means any request for a modification of an existing wireless tower, base station, or eligible support structure that does not substantially change the physical dimensions of such wireless tower, base station, or eligible support structure and that involves—

(i) collocation of new transmission equipment;

(ii) removal of transmission equipment;

(iii) replacement of transmission equipment; or

(iv) placement, construction, or modification of equipment that—

(I) improves the resiliency of the wireless tower, base station, or eligible support structure; and

(II) provides a direct benefit to public safety, such as—

(aa) providing backup power for the wireless tower, base station, or eligible support structure;

(bb) hardening the wireless tower, base station, or eligible support structure; or

(cc) providing more reliable connection capability using the wireless tower, base station, or eligible support structure.

(B) ELIGIBLE SUPPORT INFRASTRUCTURE.—The term "eligible support infrastructure" means infrastructure that supports or houses a telecommunications service facility at the time when an eligible telecommunications facilities request for a modification of such facility is submitted to a State or local government or instrumentality thereof.

(C) ELIGIBLE SUPPORT STRUCTURE.—The term "eligible support structure" means a structure that, at the time when an eligible facilities request for a modification of such structure is submitted to a State or local government or instrumentality thereof, supports or could support transmission equipment.

(D) ELIGIBLE TELECOMMUNICATIONS FACILITIES REQUEST.—The term "eligible telecommunications facilities request" means any request for a modification of an existing telecommunications service facility in or on eligible support infrastructure that does not substantially change the physical dimensions of such facility and that involves—

(i) collocation of new telecommunications service facility equipment;

(ii) removal of telecommunications service facility equipment; or

(iii) replacement of telecommunications service facility equipment.

(E) TELECOMMUNICATIONS SERVICE FACILITY.—The term "telecommunications service facility"—

(i) means a facility that is designed or used to provide or facilitate the provision of any interstate or intrastate telecommunications service; and

(ii) includes a facility described in clause (i) that is used to provide other services.

(F) TRANSMISSION EQUIPMENT.—The term "transmission equipment" has the meaning given such term in section 1.6100(b)(8) of title 47, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph).

(b) FEDERAL EASEMENTS, RIGHTS-OF-WAY, AND LEASES.—

(1) GRANT.—If an executive agency, a State, a political subdivision or agency of a State, or a person, firm, or organization applies for the grant of an easement, right-of-way, or lease to, in, over, or on a building or other property owned by the Federal Government for the right to install, construct, modify, or maintain a communications facility installation, the executive agency having control of the building or other property may grant to the applicant, on behalf of the Federal Government, subject to paragraph (3), an easement, right-of-way, or lease to

perform such installation, construction, modification, or maintenance.

(2) APPLICATION.—

(A) IN GENERAL.—The Administrator of General Services shall develop a common form for applications for easements, rights-of-way, and leases under paragraph (1) for all executive agencies that, except as provided in subparagraph (B), shall be used by all executive agencies and applicants with respect to the buildings or other property of each such agency.

(B) EXCEPTION.—The requirement under subparagraph (A) for an executive agency to use the common form developed by the Administrator of General Services shall not apply to an executive agency if the head of an executive agency notifies the Administrator that the executive agency uses a substantially similar application.

(3) TIMELY CONSIDERATION OF APPLICATIONS.—

(A) IN GENERAL.—Not later than 270 days after the date on which [an executive agency receives a duly filed application] *an application is submitted to an executive agency* for an easement, right-of-way, or lease under this subsection, the executive agency shall—

(i) grant or deny, on behalf of the Federal Government, the application; and

(ii) notify the applicant of the grant or denial.

(B) EXPLANATION OF DENIAL.—If an executive agency denies an application under subparagraph (A), the executive agency shall notify the applicant in writing, including a clear statement of the reasons for the denial.

(C) APPLICABILITY OF ENVIRONMENTAL LAWS.—Nothing in this paragraph shall be construed to relieve an executive agency of the requirements of division A of subtitle III of title 54, United States Code, or the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(D) POINT OF CONTACT.—Upon receiving an application under subparagraph (A), an executive agency shall designate one or more appropriate individuals within the executive agency to act as a point of contact with the applicant.

(E) DEEMED GRANTED.—If an executive agency fails to grant or deny an application under subparagraph (A) within the timeframe under such subparagraph, the application shall be deemed granted on the day after the last day of such timeframe.

(F) TOLLING DUE TO INCOMPLETENESS.—

(i) INITIAL APPLICATION INCOMPLETE.—If, not later than 30 days after the date on which an applicant submits to an executive agency an application under subparagraph (A), the executive agency provides to the applicant a written notice described in clause (iii) with respect to the application, the timeframe described in subparagraph (A) is tolled with respect to the application until the date on which the applicant submits to the executive agency a supplemental submission in response to the notice.

(ii) SUPPLEMENTAL SUBMISSION INCOMPLETE.—If, not later than 10 days after the date on which an applicant submits to an executive agency a supplemental submission in response to a written notice described in clause (iii), the executive agency provides to the applicant a written notice described in clause (iii) with respect to the supplemental submission, the timeframe under subparagraph (A) is further tolled until the date on which the applicant submits to the executive agency a subsequent supplemental submission in response to the notice.

(iii) WRITTEN NOTICE DESCRIBED.—The written notice described in this clause is, with respect to an application under subparagraph (A) or a supplemental submission described in clause (i) or (ii) submitted to an executive agency by an applicant, a written notice from the executive agency to the applicant—

(I) stating that all of the information (including any form or other document) required by the executive agency to be submitted for the application to be considered complete has not been submitted;

(II) identifying the information described in subclause (I) that was not submitted; and

(III) including a citation to a specific provision of a publicly available rule, regulation, or standard issued by the executive agency requiring that such information be submitted with such an application.

(iv) LIMITATION ON SUBSEQUENT WRITTEN NOTICE.—If a written notice provided by an executive agency to an applicant under clause (ii) with respect to a supplemental submission identifies as not having been submitted any information that was not identified as not having been submitted in the prior written notice under this subparagraph in response to which the supplemental submission was submitted, the subsequent written notice shall be treated as not having been provided to the applicant.

(G) TOLLING BY MUTUAL AGREEMENT.—The timeframe under subparagraph (A) may be tolled by mutual agreement between the executive agency and the applicant.

(H) WHEN APPLICATION CONSIDERED SUBMITTED.—For the purposes of this paragraph, an application shall be considered submitted to an executive agency on the date on which the applicant takes the first procedural step within the control of the applicant to submit such application in accordance with the procedures established by the executive agency for the review and approval of such an application.

(c) MASTER CONTRACTS FOR COMMUNICATIONS FACILITY INSTALLATION SITINGS.—

(1) IN GENERAL.—Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104; 110 Stat. 151) or any other provision of law, the Administrator of General Services shall—

(A) develop one or more master contracts that shall govern the placement of communications facility installations on buildings and other property owned by the Federal Government; and

(B) in developing the master contract or contracts, standardize the treatment of the placement of communications facility installations on building rooftops or facades, the placement of communications facility installations on rooftops or inside buildings, the technology used in connection with communications facility installations placed on Federal buildings and other property, and any other key issues the Administrator of General Services considers appropriate.

(2) APPLICABILITY.—The master contract or contracts developed by the Administrator of General Services under paragraph (1) shall apply to all publicly accessible buildings and other property owned by the Federal Government, unless the Administrator of General Services decides that issues with respect to the siting of a communications facility installation on a specific building or other property warrant nonstandard treatment of such building or other property.

(3) APPLICATION.—

(A) IN GENERAL.—The Administrator of General Services shall develop a common form or set of forms for communications facility installation siting applications that, except as provided in subparagraph (B), shall be used by all executive agencies and applicants with respect to the buildings and other property of each such agency.

(B) EXCEPTION.—The requirement under subparagraph (A) for an executive agency to use the common form or set of forms developed by the Administrator of General Services shall not apply to an executive agency if the head of the executive agency notifies the Administrator that the executive agency uses a substantially similar application.

(d) DEFINITIONS.—In this section:

(1) COMMUNICATIONS FACILITY INSTALLATION.—The term "communications facility installation" includes—

(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.

(2) EXECUTIVE AGENCY.—The term "executive agency" has the meaning given such term in section 102 of title 40, United States Code.

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INFRASTRUCTURE INVESTMENT AND JOBS ACT

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DIVISION F—BROADBAND

TITLE I—BROADBAND GRANTS FOR STATES, DISTRICT OF COLUMBIA, PUERTO RICO, AND TERRITORIES

* * * * * * *

SEC. 60102. GRANTS FOR BROADBAND DEPLOYMENT.

(a) DEFINITIONS.—

(1) AREAS, LOCATIONS, AND INSTITUTIONS LACKING BROADBAND ACCESS.—In this section:

(A) UNSERVED LOCATION.—The term "unserved location" means a broadband-serviceable location, as determined in accordance with the broadband DATA maps, that—

(i) has no access to broadband service; or

(ii) lacks access to reliable broadband service offered with—

(I) a speed of not less than—

(aa) 25 megabits per second for downloads; and

(bb) 3 megabits per second for uploads; and

(II) a latency sufficient to support real-time, interactive applications.

(B) UNSERVED SERVICE PROJECT.—The term "unserved service project" means a project in which not less than 80 percent of broadband-serviceable locations served by the project are unserved locations.

(C) UNDERSERVED LOCATION.—The term "underserved location" means a location—

(i) that is not an unserved location; and

(ii) as determined in accordance with the broadband DATA maps, lacks access to reliable broadband service offered with—

(I) a speed of not less than—

(aa) 100 megabits per second for downloads; and

(bb) 20 megabits per second for uploads; and

(II) a latency sufficient to support real-time, interactive applications.

(D) UNDERSERVED SERVICE PROJECT.—The term "underserved service project" means a project in which not less than 80 percent of broadband-serviceable locations served

by the project are unserved locations or underserved locations.

(E) ELIGIBLE COMMUNITY ANCHOR INSTITUTION.—The term "eligible community anchor institution" means a community anchor institution that lacks access to gigabit-level broadband service.

(2) OTHER DEFINITIONS.—In this section:

(A) ASSISTANT SECRETARY.—The term "Assistant Secretary" means the Assistant Secretary of Commerce for Communications and Information.

(B) BROADBAND; BROADBAND SERVICE.—The term "broadband" or "broadband service" has the meaning given the term "broadband internet access service" in section 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation.

(C) BROADBAND DATA MAPS.—The term "broadband DATA maps" means the maps created under section 802(c)(1) of the Communications Act of 1934 (47 U.S.C. 642(c)(1)).

(D) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(E) COMMUNITY ANCHOR INSTITUTION.—The term "community anchor institution" means an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals.

(F) ELIGIBLE ENTITY.—The term "eligible entity" means a State.

(G) HIGH-COST AREA.—

(i) IN GENERAL.—The term "high-cost area" means an unserved area in which the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in unserved areas in the United States (as determined by the Assistant Secretary, in consultation with the Commission), incorporating factors that include—

(I) the remote location of the area;

(II) the lack of population density of the area;

(III) the unique topography of the area;

(IV) a high rate of poverty in the area; or

(V) any other factor identified by the Assistant Secretary, in consultation with the Commission, that contributes to the higher cost of deploying broadband service in the area.

(ii) UNSERVED AREA.—For purposes of clause (i), the term "unserved area" means an area in which not less than 80 percent of broadband-serviceable locations are unserved locations.

(H) LOCATION; BROADBAND-SERVICEABLE LOCATION.—The terms "location" and "broadband-serviceable location" have the meanings given those terms by the Commission under

rules and guidance that are in effect, as of the date of enactment of this Act.

(I) PRIORITY BROADBAND PROJECT.—The term "priority broadband project" means a project designed to—

(i) provide broadband service that meets speed, latency, reliability, consistency in quality of service, and related criteria as the Assistant Secretary shall determine; and

(ii) ensure that the network built by the project can easily scale speeds over time to—

(I) meet the evolving connectivity needs of households and businesses; and

(II) support the deployment of 5G, successor wireless technologies, and other advanced services.

(J) PROGRAM.—The term "Program" means the Broadband Equity, Access, and Deployment Program established under subsection (b)(1).

(K) PROJECT.—The term "project" means an undertaking by a subgrantee under this section to construct and deploy infrastructure for the provision of broadband service.

(L) RELIABLE BROADBAND SERVICE.—The term "reliable broadband service" means broadband service that meets performance criteria for service availability, adaptability to changing end-user requirements, length of serviceable life, or other criteria, other than upload and download speeds, as determined by the Assistant Secretary in coordination with the Commission.

(M) STATE.—The term "State" has the meaning given the term in section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942), except that that definition shall be applied by striking ", and any other territory or possession of the United States".

(N) SUBGRANTEE.—The term "subgrantee" means an entity that receives grant funds from an eligible entity to carry out activities under subsection (f).

(b) BROADBAND EQUITY, ACCESS, AND DEPLOYMENT PROGRAM.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Assistant Secretary shall establish a grant program, to be known as the "Broadband Equity, Access, and Deployment Program", under which the Assistant Secretary makes grants to eligible entities, in accordance with this section, to bridge the digital divide.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Assistant Secretary to carry out the Program $42,450,000,000.

(3) OBLIGATION TIMELINE.—The Assistant Secretary shall obligate all amounts appropriated pursuant to paragraph (2) in an expedient manner after the Assistant Secretary issues the notice of funding opportunity under subsection (e)(1).

(4) TECHNICAL SUPPORT AND ASSISTANCE.—

(A) PROGRAM ASSISTANCE.—As part of the Program, the Assistant Secretary, in consultation with the Commission, shall provide technical support and assistance to eligible

entities to facilitate their participation in the Program, including by assisting eligible entities with—

(i) the development of grant applications under the Program;

(ii) the development of plans and procedures for distribution of funds under the Program; and

(iii) other technical support as determined by the Assistant Secretary.

(B) GENERAL ASSISTANCE.—The Assistant Secretary shall provide technical and other assistance to eligible entities—

(i) to support the expansion of broadband, with priority for—

(I) expansion in rural areas; and

(II) eligible entities that consistently rank below most other eligible entities with respect to broadband access and deployment; and

(ii) regarding cybersecurity resources and programs available through Federal agencies, including the Election Assistance Commission, the Cybersecurity and Infrastructure Security Agency, the Federal Trade Commission, and the National Institute of Standards and Technology.

(c) ALLOCATION.—

(1) ALLOCATION FOR HIGH-COST AREAS.—

(A) IN GENERAL.—On or after the date on which the broadband DATA maps are made public, the Assistant Secretary shall allocate to eligible entities, in accordance with subparagraph (B) of this paragraph, 10 percent of the amount appropriated pursuant to subsection (b)(2).

(B) FORMULA.—The Assistant Secretary shall calculate the amount allocated to an eligible entity under subparagraph (A) by—

(i) dividing the number of unserved locations in high-cost areas in the eligible entity by the total number of unserved locations in high-cost areas in the United States; and

(ii) multiplying the quotient obtained under clause (i) by the amount made available under subparagraph (A).

(2) MINIMUM INITIAL ALLOCATION.—Of the amount appropriated pursuant to subsection (b)(2)—

(A) except as provided in subparagraph (B) of this paragraph, $100,000,000 shall be allocated to each State; and

(B) $100,000,000 shall be allocated to, and divided equally among, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(3) ALLOCATION OF REMAINING AMOUNTS.—

(A) IN GENERAL.—On or after the date on which the broadband DATA maps are made public, of the amount appropriated pursuant to subsection (b)(2), the Assistant Secretary shall allocate to eligible entities, in accordance with subparagraph (B) of this paragraph, the amount remaining after compliance with paragraphs (1) and (2) of this subsection.

(B) ALLOCATION.—The amount allocated to an eligible entity under subparagraph (B) shall be calculated by—

(i) dividing the number of unserved locations in the eligible entity by the total number of unserved locations in the United States; and

(ii) multiplying the quotient obtained under clause (i) by the amount made available under subparagraph (A).

(4) AVAILABILITY CONDITIONED ON APPROVAL OF APPLICATIONS.—The availability of amounts allocated under paragraph (1), (2), or (3) to an eligible entity shall be subject to approval by the Assistant Secretary of the letter of intent, initial proposal, or final proposal of the eligible entity, as applicable, under subsection (e).

(5) CONTINGENCY PROCEDURES.—

(A) DEFINITION.—In this paragraph, the term "covered application" means a letter of intent, initial proposal, or final proposal under this section.

(B) POLITICAL SUBDIVISIONS AND CONSORTIA.—

(i) APPLICATION FAILURES.—The Assistant Secretary, in carrying out the Program, shall provide that if an eligible entity fails to submit a covered application by the applicable deadline, or a covered application submitted by an eligible entity is not approved by the applicable deadline, a political subdivision or consortium of political subdivisions of the eligible entity may submit the applicable type of covered application in place of the eligible entity.

(ii) TREATMENT OF POLITICAL SUBDIVISION OR CONSORTIUM AS ELIGIBLE ENTITY.—In the case of a political subdivision or consortium of political subdivisions that submits a covered application under clause (i) that is approved by the Assistant Secretary—

(I) except as provided in subclause (II) of this clause, any reference in this section to an eligible entity shall be deemed to refer to the political subdivision or consortium; and

(II) any reference in this section to an eligible entity in a geographic sense shall be deemed to refer to the eligible entity in whose place the political subdivision or consortium submitted the covered application.

(C) REALLOCATION TO OTHER ELIGIBLE ENTITIES.—

(i) APPLICATION FAILURES.—The Assistant Secretary, in carrying out the Program, shall provide that if an eligible entity fails to submit a covered application by the applicable deadline, or a covered application submitted by an eligible entity is not approved by the applicable deadline, as provided in subparagraph (A)), and no political subdivision or consortium of political subdivisions of the eligible entity submits a covered application by the applicable deadline, or no covered application submitted by such a political subdivision or consortium is approved by the applicable deadline,

as provided in subparagraph (B), the Assistant Secretary—

(I) shall reallocate the amounts that would have been available to the eligible entity pursuant to that type of covered application to other eligible entities that submitted that type of covered application by the applicable deadline; and

(II) shall reallocate the amounts described in subclause (I) of this clause in accordance with the formula under paragraph (3).

(ii) FAILURE TO USE FULL ALLOCATION.—The Assistant Secretary, in carrying out the Program, shall provide that if an eligible entity fails to use the full amount allocated to the eligible entity under this subsection by the applicable deadline, the Assistant Secretary—

(I) shall reallocate the unused amounts to other eligible entities with approved final proposals; and

(II) shall reallocate the amounts described in subclause (I) in accordance with the formula under paragraph (3).

(d) ADMINISTRATIVE EXPENSES.—

(1) ASSISTANT SECRETARY.—The Assistant Secretary may use not more than 2 percent of amounts appropriated pursuant to subsection (b) for administrative purposes.

(2) ELIGIBLE ENTITIES.—

(A) PRE-DEPLOYMENT PLANNING.—An eligible entity may use not more than 5 percent of the amount allocated to the eligible entity under subsection (c)(2) for the planning and pre-deployment activities under subsection (e)(1)(C).

(B) ADMINISTRATION.—An eligible entity may use not more than 2 percent of the grant amounts made available to the eligible entity under subsection (e) for expenses relating (directly or indirectly) to administration of the grant.

(e) IMPLEMENTATION.—

(1) INITIAL PROGRAM DEPLOYMENT AND PLANNING.—

(A) NOTICE OF FUNDING OPPORTUNITY; PROCESS.—Not later than 180 days after the date of enactment of this Act, the Assistant Secretary shall—

(i) issue a notice of funding opportunity for the Program that—

(I) notifies eligible entities of—

(aa) the establishment of the Program; and

(bb) the amount of the minimum initial allocation to each eligible entity under subsection (c)(2);

(II) invites eligible entities to submit letters of intent under subparagraph (B) in order to—

(aa) participate in the Program; and

(bb) receive funding for planning and predeployment activities under subparagraph (C);

(III) contains details about the Program, including an outline of the requirements for—

(aa) applications for grants under the Program, which shall consist of letters of intent, initial proposals, and final proposals; and

(bb) allowed uses of grant amounts awarded under this section, as provided in subsection (f); and

(IV) includes any other information determined relevant by the Assistant Secretary;

(ii) establish a process, in accordance with subparagraph (C), through which to provide funding to eligible entities for planning and pre-deployment activities;

(iii) develop and make public a standard online application form that an eligible entity may use to submit an initial proposal and final proposal for the grant amounts allocated to the eligible entity under subsection (c);

(iv) publish a template—

(I) initial proposal that complies with paragraph (3)(A); and

(II) final proposal that complies with paragraph (4)(A); and

(v) in consultation with the Commission, establish standards for how an eligible entity shall assess the capabilities and capacities of a prospective subgrantee under subsection (g)(2)(A).

(B) LETTER OF INTENT.—

(i) IN GENERAL.—An eligible entity that wishes to participate in the Program shall file a letter of intent to participate in the Program consistent with this subparagraph.

(ii) FORM AND CONTENTS.—The Assistant Secretary may establish the form and contents required for a letter of intent under this subparagraph, which contents may include—

(I) details of—

(aa) the existing broadband program or office of the eligible entity, including—

(AA) activities that the program or office currently conducts;

(BB) the number of rounds of broadband deployment grants that the eligible entity has awarded, if applicable;

(CC) whether the eligible entity has an eligible entity-wide plan and goal for availability of broadband, and any relevant deadlines, as applicable; and

(DD) the amount of funding that the eligible entity has available for broadband deployment or other broadband-related activities, including data collection and local planning, and the sources of that funding, including whether the funds are from the eligible entity or from the Federal Government under the American

Rescue Plan Act of 2021 (Public Law 117-2);

(bb) the number of full-time employees and part-time employees of the eligible entity who will assist in administering amounts received under the Program and the duties assigned to those employees;

(cc) relevant contracted support; and

(dd) the goals of the eligible entity for the use of amounts received under the Program, the process that the eligible entity will use to distribute those amounts to subgrantees, the timeline for awarding subgrants, and oversight and reporting requirements that the eligible entity will impose on subgrantees;

(II) the identification of known barriers or challenges to developing and administering a program to administer grants received under the Program, if applicable;

(III) the identification of the additional capacity needed by the eligible entity to implement the requirements under this section, such as—

(aa) enhancing the capacity of the broadband program or office of the eligible entity by receiving technical assistance from Federal entities or other partners, hiring additional employees, or obtaining support from contracted entities; or

(bb) acquiring additional programmatic information or data, such as through surveys or asset inventories;

(IV) an explanation of how the needs described in subclause (III) were identified and how funds may be used to address those needs, including target areas;

(V) details of any relevant partners, such as organizations that may inform broadband deployment and adoption planning; and

(VI) any other information determined relevant by the Assistant Secretary.

(C) PLANNING FUNDS.—

(i) IN GENERAL.—The Assistant Secretary shall establish a process through which an eligible entity, in submitting a letter of intent under subparagraph (B), may request access to not more than 5 percent of the amount allocated to the eligible entity under subsection (c)(2) for use consistent with this subparagraph.

(ii) FUNDING AVAILABILITY.—If the Assistant Secretary approves a request from an eligible entity under clause (i), the Assistant Secretary shall make available to the eligible entity an amount, as determined appropriate by the Assistant Secretary, that is not more than 5 percent of the amount allocated to the eligible entity under subsection (c)(2).

(iii) ELIGIBLE USE.—The Assistant Secretary shall determine the allowable uses of amounts made available under clause (ii), which may include—

(I) research and data collection, including initial identification of unserved locations and underserved locations;

(II) the development of a preliminary budget for pre-planning activities;

(III) publications, outreach, and communications support;

(IV) providing technical assistance, including through workshops and events;

(V) training for employees of the broadband program or office of the eligible entity or employees of political subdivisions of the eligible entity, and related staffing capacity or consulting or contracted support; and

(VI) with respect to an office that oversees broadband programs and broadband deployment in an eligible entity, establishing, operating, or increasing the capacity of such a broadband office.

(D) ACTION PLAN.—

(i) IN GENERAL.—An eligible entity that receives funding from the Assistant Secretary under subparagraph (C) shall submit to the Assistant Secretary a 5-year action plan, which shall—

(I) be informed by collaboration with local and regional entities; and

(II) detail—

(aa) investment priorities and associated costs;

(bb) alignment of planned spending with economic development, telehealth, and related connectivity efforts.

(ii) REQUIREMENTS OF ACTION PLANS.—The Assistant Secretary shall establish requirements for the 5-year action plan submitted by an eligible entity under clause (i), which may include requirements to—

(I) address local and regional needs in the eligible entity with respect to broadband service;

(II) propose solutions for the deployment of affordable broadband service in the eligible entity;

(III) include localized data with respect to the deployment of broadband service in the eligible entity, including by identifying locations that should be prioritized for Federal support with respect to that deployment;

(IV) ascertain how best to serve unserved locations in the eligible entity, whether through the establishment of cooperatives or public-private partnerships;

(V) identify the technical assistance that would be necessary to carry out the plan; and

(VI) assess the amount of time it would take to build out universal broadband service in the eligible entity.

(2) NOTICE OF AVAILABLE AMOUNTS; INVITATION TO SUBMIT INITIAL AND FINAL PROPOSALS.—On or after the date on which the broadband DATA maps are made public, the Assistant Secretary, in coordination with the Commission, shall issue a notice to each eligible entity that—

(A) contains the estimated amount available to the eligible entity under subsection (c); and

(B) invites the eligible entity to submit an initial proposal and final proposal for a grant under this section, in accordance with paragraphs (3) and (4) of this subsection.

(3) INITIAL PROPOSAL.—

(A) SUBMISSION.—

(i) IN GENERAL.—After the Assistant Secretary issues the notice under paragraph (2), an eligible entity that wishes to receive a grant under this section shall submit an initial proposal for a grant, using the online application form developed by the Assistant Secretary under paragraph (1)(A)(iii), that—

(I) outlines long-term objectives for deploying broadband, closing the digital divide, and enhancing economic growth and job creation, including—

(aa) information developed by the eligible entity as part of the action plan submitted under paragraph (1)(D), if applicable; and

(bb) information from any comparable strategic plan otherwise developed by the eligible entity, if applicable;

(II)(aa) identifies, and outlines steps to support, local and regional broadband planning processes or ongoing efforts to deploy broadband or close the digital divide; and

(bb) describes coordination with local governments, along with local and regional broadband planning processes;

(III) identifies existing efforts funded by the Federal Government or a State within the jurisdiction of the eligible entity to deploy broadband and close the digital divide;

(IV) includes a plan to competitively award subgrants to ensure timely deployment of broadband;

(V) identifies—

(aa) each unserved location or underserved location under the jurisdiction of the eligible entity; and

(bb) each community anchor institution under the jurisdiction of the eligible entity that is an eligible community anchor institution; and

(VI) certifies the intent of the eligible entity to comply with all applicable requirements under this section, including the reporting requirements under subsection (j)(1).

(ii) LOCAL COORDINATION.—

(I) IN GENERAL.—The Assistant Secretary shall establish local coordination requirements for eligible entities to follow, to the greatest extent practicable.

(II) REQUIREMENTS.—The local coordination requirements established under subclause (I) shall include, at minimum, an opportunity for political subdivisions of an eligible entity to—

(aa) submit plans for consideration by the eligible entity; and

(bb) comment on the initial proposal of the eligible entity before the initial proposal is submitted to the Assistant Secretary.

(B) SINGLE INITIAL PROPOSAL.—An eligible entity may submit only 1 initial proposal under this paragraph.

(C) CORRECTIONS TO INITIAL PROPOSAL.—The Assistant Secretary may accept corrections to the initial proposal of an eligible entity after the initial proposal has been submitted.

(D) CONSIDERATION OF INITIAL PROPOSAL.—After receipt of an initial proposal for a grant under this paragraph, the Assistant Secretary—

(i) shall acknowledge receipt;

(ii) if the initial proposal is complete—

(I) shall determine whether the use of funds proposed in the initial proposal—

(aa) complies with subsection (f);

(bb) is in the public interest; and

(cc) effectuates the purposes of this Act;

(II) shall approve or disapprove the initial proposal based on the determinations under subclause (I); and

(III) if the Assistant Secretary approves the initial proposal under clause (ii)(II), shall make available to the eligible entity—

(aa) 20 percent of the grant funds that were allocated to the eligible entity under subsection (c); or

(bb) a higher percentage of the grant funds that were allocated to the eligible entity under subsection (c), at the discretion of the Assistant Secretary; and

(iii) if the initial proposal is incomplete, or is disapproved under clause (ii)(II), shall notify the eligible entity and provide the eligible entity with an opportunity to resubmit the initial proposal.

(E) CONSIDERATION OF RESUBMITTED INITIAL PROPOSAL.—After receipt of a resubmitted initial proposal for a grant under this paragraph, the Assistant Secretary—

(i) shall acknowledge receipt;

(ii) if the initial proposal is complete—

(I) shall determine whether the use of funds proposed in the initial proposal—

(aa) complies with subsection (f);

(bb) is in the public interest; and

(cc) effectuates the purposes of this Act;

(II) shall approve or disapprove the initial proposal based on the determinations under subclause (I); and

(III) if the Assistant Secretary approves the initial proposal under clause (ii)(II), shall make available to the eligible entity—

(aa) 20 percent of the grant funds that were allocated to the eligible entity under subsection (c); or

(bb) a higher percentage of the grant funds that were allocated to the eligible entity under subsection (c), at the discretion of the Assistant Secretary; and

(iii) if the initial proposal is incomplete, or is disapproved under clause (ii)(II), shall notify the eligible entity and provide the eligible entity with an opportunity to resubmit the initial proposal.

(4) FINAL PROPOSAL.—

(A) SUBMISSION.—

(i) IN GENERAL.—After the Assistant Secretary approvals the initial proposal of an eligible entity under paragraph (3), the eligible entity may submit a final proposal for the remainder of the amount allocated to the eligible entity under subsection (c), using the online application form developed by the Assistant Secretary under paragraph (1)(A)(iii), that includes—

(I) a detailed plan that specifies how the eligible entity will—

(aa) allocate grant funds for the deployment of broadband networks to unserved locations and underserved locations, in accordance with subsection (h)(1)(A)(i); and

(bb) align the grant funds allocated to the eligible entity under subsection (c), where practicable, with the use of other funds that the eligible entity receives from the Federal Government, a State, or a private entity for related purposes;

(II) a timeline for implementation;

(III) processes for oversight and accountability to ensure the proper use of the grant funds allocated to the eligible entity under subsection (c); and

(IV) a description of coordination with local governments, along with local and regional broadband planning processes.

(ii) LOCAL COORDINATION.—

(I) IN GENERAL.—The Assistant Secretary shall establish local coordination requirements for eligible entities to follow, to the greatest extent practicable.

(II) REQUIREMENTS.—The local coordination requirements established under subclause (I) shall

include, at minimum, an opportunity for political subdivisions of an eligible entity to—

(aa) submit plans for consideration by the eligible entity; and

(bb) comment on the final proposal of the eligible entity before the final proposal is submitted to the Assistant Secretary.

(iii) FEDERAL COORDINATION.—To ensure efficient and effective use of taxpayer funds, an eligible entity shall, to the greatest extent practicable, align the use of grant funds proposed in the final proposal under clause (i) with funds available from other Federal programs that support broadband deployment and access.

(B) SINGLE FINAL PROPOSAL.—An eligible entity may submit only 1 final proposal under this paragraph.

(C) CORRECTIONS TO FINAL PROPOSAL.—The Assistant Secretary may accept corrections to the final proposal of an eligible entity after the final proposal has been submitted.

(D) CONSIDERATION OF FINAL PROPOSAL.—After receipt of a final proposal for a grant under this paragraph, the Assistant Secretary—

(i) shall acknowledge receipt;

(ii) if the final proposal is complete—

(I) shall determine whether the use of funds proposed in the final proposal—

(aa) complies with subsection (f);

(bb) is in the public interest; and

(cc) effectuates the purposes of this Act;

(II) shall approve or disapprove the final proposal based on the determinations under subclause (I); and

(III) if the Assistant Secretary approves the final proposal under clause (ii)(II), shall make available to the eligible entity the remainder of the grant funds allocated to the eligible entity under subsection (c); and

(iii) if the final proposal is incomplete, or is disapproved under clause (ii)(II), shall notify the eligible entity and provide the eligible entity with an opportunity to resubmit the final proposal.

(E) CONSIDERATION OF RESUBMITTED FINAL PROPOSAL.—After receipt of a resubmitted final proposal for a grant under this paragraph, the Assistant Secretary—

(i) shall acknowledge receipt;

(ii) if the final proposal is complete—

(I) shall determine whether the use of funds proposed in the final proposal—

(aa) complies with subsection (f);

(bb) is in the public interest; and

(cc) effectuates the purposes of this Act;

(II) shall approve or disapprove the final proposal based on the determinations under subclause (I); and

(III) if the Assistant Secretary approves the final proposal under clause (ii)(II), shall make

available to the eligible entity the remainder of the grant funds allocated to the eligible entity under subsection (c); and

(iii) if the final proposal is incomplete, or is disapproved under clause (ii)(II), shall notify the eligible entity and provide the eligible entity with an opportunity to resubmit the final proposal.

(F) CERTIFICATION REGARDING STREAMLINING OF CERTAIN FEES RELATING TO BROADBAND INFRASTRUCTURE.—An eligible entity that submits a final proposal under this paragraph shall certify in such final proposal that any fee charged by the eligible entity, or any political subdivision of the eligible entity, to consider a request for authorization to place, construct, or modify, using (in whole or in part) grant funds received under this paragraph, infrastructure for the provision of broadband service, and any fee for use of a right-of-way or infrastructure in a right-of-way owned or managed by the entity or political subdivision for the placement, construction, or modification, using (in whole or in part) grant funds received under this paragraph, of infrastructure for the provision of broadband service, will be—

(i) competitively neutral, technology neutral, and nondiscriminatory;

(ii) established in advance and publicly disclosed;

(iii) calculated—

(I) based on actual and direct costs, such as costs for—

(aa) review and processing of requests; and

(bb) repairs and replacement of—

(AA) components and materials directly resulting from and affected by the placement, construction, or modification (including the installation or improvement) of infrastructure for the provision of broadband service; or

(BB) equipment that facilitates the placement, construction, or modification (including the installation or improvement) of such infrastructure; and

(II) using, for purposes of subclause (I), only costs that are objectively reasonable; and

(iv) described to a requesting party in a manner that distinguishes between—

(I) nonrecurring fees and recurring fees; and

(II) the use of infrastructure on which infrastructure for the provision of broadband service is already located and infrastructure on which there is no infrastructure for the provision of broadband service as of the date on which the request is submitted to the eligible entity or political subdivision.

(f) USE OF FUNDS.—An eligible entity may use grant funds received under this section to competitively award subgrants for—

(1) unserved service projects and underserved service projects;

(2) connecting eligible community anchor institutions;
(3) data collection, broadband mapping, and planning;
(4) installing internet and Wi-Fi infrastructure or providing reduced-cost broadband within a multi-family residential building, with priority given to a residential building that—
(A) has a substantial share of unserved households; or
(B) is in a location in which the percentage of individuals with a household income that is at or below 150 percent of the poverty line applicable to a family of the size involved (as determined under section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) is higher than the national percentage of such individuals;
(5) broadband adoption, including programs to provide affordable internet-capable devices; and
(6) any use determined necessary by the Assistant Secretary to facilitate the goals of the Program.
(g) GENERAL PROGRAM REQUIREMENTS.—
(1) SUBGRANTEE OBLIGATIONS.—A subgrantee, in carrying out activities using amounts received from an eligible entity under this section—
(A) shall adhere to quality-of-service standards, as established by the Assistant Secretary;
(B) shall comply with prudent cybersecurity and supply chain risk management practices, as specified by the Assistant Secretary, in consultation with the Director of the National Institute of Standards and Technology and the Commission;
(C) shall incorporate best practices, as defined by the Assistant Secretary, for ensuring reliability and resilience of broadband infrastructure; and
(D) may not use the amounts to purchase or support—
(i) any covered communications equipment or service, as defined in section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. 1608); or
(ii) fiber optic cable and optical transmission equipment manufactured in the People's Republic of China, except that the Assistant Secretary may waive the application of this clause with respect to a project if the eligible entity that awards a subgrant for the project shows that such application would unreasonably increase the cost of the project.
(2) ELIGIBLE ENTITY OBLIGATIONS.—In distributing funds to subgrantees under this section, an eligible entity shall—
(A) ensure that any prospective subgrantee—
(i) is capable of carrying out activities funded by the subgrant in a competent manner in compliance with all applicable Federal, State, and local laws;
(ii) has the financial and managerial capacity to meet—
(I) the commitments of the subgrantee under the subgrant;
(II) the requirements of the Program; and
(III) such requirements as may be further prescribed by the Assistant Secretary; and

(iii) has the technical and operational capability to provide the services promised in the subgrant in the manner contemplated by the subgrant award;

(B) stipulate, in any contract with a subgrantee for the use of such funds, reasonable provisions for recovery of funds for nonperformance; and

(C)(i) distribute the funds in an equitable and non-discriminatory manner; and

(ii) ensure, through a stipulation in any contract with a subgrantee for the use of such funds, that each subgrantee uses the funds in an equitable and nondiscriminatory manner.

(3) DEOBLIGATION OF AWARDS; INTERNET DISCLOSURE.—The Assistant Secretary—

(A) shall establish, in coordination with relevant Federal and State partners, appropriate mechanisms to ensure appropriate use of funds made available under this section;

(B) may, in addition to other authority under applicable law—

(i) deobligate grant funds awarded to an eligible entity that—

(I) violates paragraph (2); or

(II) demonstrates an insufficient level of performance, or wasteful or fraudulent spending, as defined in advance by the Assistant Secretary; and

(ii) award grant funds that are deobligated under clause (i) to new or existing applicants consistent with this section; and

(C) shall create and maintain a fully searchable database, accessible on the internet at no cost to the public, that contains information sufficient to allow the public to understand and monitor grants and subgrants awarded under the Program.

(h) BROADBAND NETWORK DEPLOYMENT.—

(1) ORDER OF AWARDS; PRIORITY.—

(A) IN GENERAL.—An eligible entity, in awarding subgrants for the deployment of a broadband network using grant funds received under this section, as authorized under subsection (f)(1)—

(i) shall award funding in a manner that—

(I) prioritizes unserved service projects;

(II) after certifying to the Assistant Secretary that the eligible entity will ensure coverage of broadband service to all unserved locations within the eligible entity, prioritizes underserved service projects; and

(III) after prioritizing underserved service projects, provides funding to connect eligible community anchor institutions;

(ii) in providing funding under subclauses (I), (II), and (III) of clause (i), shall prioritize funding for deployment of broadband infrastructure for priority broadband projects;

(iii) may not exclude cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments from eligibility for such grant funds; and

(iv) shall give priority to projects based on—

(I) deployment of a broadband network to persistent poverty counties or high-poverty areas;

(II) the speeds of the proposed broadband service;

(III) the expediency with which a project can be completed; and

(IV) a demonstrated record of and plans to be in compliance with Federal labor and employment laws.

(B) AUTHORITY OF ASSISTANT SECRETARY.—The Assistant Secretary may provide additional guidance on the prioritization of subgrants awarded for the deployment of a broadband network using grant funds received under this section.

(2) CHALLENGE PROCESS.—

(A) IN GENERAL.—After submitting an initial proposal under subsection (e)(3) and before allocating grant funds received under this section for the deployment of broadband networks, an eligible entity shall ensure a transparent, evidence-based, and expeditious challenge process under which a unit of local government, nonprofit organization, or other broadband service provider can challenge a determination made by the eligible entity in the initial proposal as to whether a particular location or community anchor institution within the jurisdiction of the eligible entity is eligible for the grant funds, including whether a particular location is unserved or underserved.

(B) FINAL IDENTIFICATION; NOTIFICATION OF FUNDING ELIGIBILITY.—After resolving each challenge under subparagraph (A), and not later than 60 days before allocating grant funds received under this section for the deployment of broadband networks, an eligible entity shall provide public notice of the final classification of each unserved location, underserved location, or eligible community anchor institution within the jurisdiction of the eligible entity.

(C) CONSULTATION WITH NTIA.—An eligible entity shall notify the Assistant Secretary of any modification to the initial proposal of the eligible entity submitted under subsection (e)(3) that is necessitated by a successful challenge under subparagraph (A) of this paragraph.

(D) NTIA AUTHORITY.—The Assistant Secretary—

(i) may modify the challenge process required under subparagraph (A) as necessary; and

(ii) may reverse the determination of an eligible entity with respect to the eligibility of a particular location or community anchor institution for grant funds under this section.

(E) EXPEDITING BROADBAND DATA COLLECTION ACTIVITIES.—

(i) DEADLINE FOR RESOLUTION OF CHALLENGE PROCESS UNDER BROADBAND DATA ACT.—Section 802(b)(5)(C)(i) of the Communications Act of 1934 (47 U.S.C. 642(b)(5)(C)(i)) is amended by striking "challenges" and inserting the following: "challenges, which shall require that the Commission resolve a challenge not later than 90 days after the date on which a final response by a provider to a challenge to the accuracy of a map or information described in subparagraph (A) is complete".

(ii) PAPERWORK REDUCTION ACT EXEMPTION EXPANSION.—Section 806(b) of the Communications Act of 1934 (47 U.S.C. 646(b)) is amended by striking "the initial rule making required under section 802(a)(1)" and inserting "any rule making or other action by the Commission required under this title".

(iii) IMPLEMENTATION.—The Commission shall implement the amendments made by this subparagraph as soon as possible after the date of enactment of this Act.

(3) NON-FEDERAL SHARE OF BROADBAND INFRASTRUCTURE DEPLOYMENT COSTS.—

(A) IN GENERAL.—

(i) MATCHING REQUIREMENT.—In allocating grant funds received under this section for deployment of broadband networks, an eligible entity shall provide, or require a subgrantee to provide, a contribution, derived from non-Federal funds (or funds from a Federal regional commission or authority), except in high-cost areas or as otherwise provided by this Act, of not less than 25 percent of project costs.

(ii) WAIVER.—Upon request by an eligible entity or a subgrantee, the Assistant Secretary may reduce or waive the required matching contribution under clause (i).

(B) SOURCE OF MATCH.—A matching contribution under subparagraph (A)—

(i) may be provided by an eligible entity, a unit of local government, a utility company, a cooperative, a nonprofit organization, a for-profit company, regional planning or governmental organization, a Federal regional commission or authority, or any combination thereof;

(ii) may include in-kind contributions; and

(iii) may include funds that were provided to an eligible entity or a subgrantee—

(I) under—

(aa) the Families First Coronavirus Response Act (Public Law 116-127; 134 Stat. 178);

(bb) the CARES Act (Public Law 116-136; 134 Stat. 281);

(cc) the Consolidated Appropriations Act, 2021 (Public Law 116-260; 134 Stat. 1182);

(dd) the American Rescue Plan Act of 2021 (Public Law 117-2; 135 Stat. 4); or

(ee) any amendment made by an Act described in any of items (aa) through (dd); and

(II) for the purpose of deployment of broadband service, as described in the applicable provision of law described in subclause (I).

(C) DEFINITION.—For purposes of this paragraph, the term "Federal regional commission or authority" means—

(i) the Appalachian Regional Commission;

(ii) the Delta Regional Authority;

(iii) the Denali Commission; and

(iv) the Northern Border Regional Commission.

(4) DEPLOYMENT AND PROVISION OF SERVICE REQUIREMENTS.—An entity that receives a subgrant under subsection (f)(1) for the deployment of a broadband network—

(A) in providing broadband service using the network—

(i) shall provide broadband service—

(I) at a speed of not less than 100 megabits per second for downloads and 20 megabits per second for uploads;

(II) with a latency that is sufficiently low to allow reasonably foreseeable, real-time, interactive applications; and

(III) with network outages that do not exceed, on average, 48 hours over any 365-day period; and

(ii) shall provide access to broadband service to each customer served by the project that desires broadband service;

(B) shall offer not less than 1 low-cost broadband service option for eligible subscribers, as those terms are defined in paragraph (5) of this subsection;

(C) shall deploy the broadband network and begin providing broadband service to each customer that desires broadband service not later than 4 years after the date on which the entity receives the subgrant, except that an eligible entity may extend the deadline under this subparagraph if—

(i) the eligible entity has a plan for use of the grant funds;

(ii) the construction project is underway; or

(iii) extenuating circumstances require an extension of time to allow the project to be completed;

(D) for any project that involves laying fiber optic cables or conduit underground or along a roadway, shall include interspersed conduit access points at regular and short intervals;

(E) may use the subgrant to deploy broadband infrastructure in or through any area required to reach interconnection points or otherwise to ensure the technical feasibility and financial sustainability of a project providing broadband service to an unserved location, underserved location, or eligible community anchor institution;

(F) once the network has been deployed, shall provide public notice, online and through other means, of that fact

to the locations and areas to which broadband service has been provided and share the public notice with the eligible entity that awarded the subgrant;

(G) shall carry out public awareness campaigns in service areas that are designed to highlight the value and benefits of broadband service in order to increase the adoption of broadband service by consumers; and

(H) if the entity is no longer able to provide broadband service to the locations covered by the subgrant at any time, shall sell the network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to other broadband service providers or public sector entities.

(5) LOW-COST BROADBAND SERVICE OPTION.—

(A) DEFINITIONS.—In this paragraph—

(i) the term "eligible subscriber" shall have the meaning given the term by the Assistant Secretary for purposes of this paragraph; and

(ii) the term "low-cost broadband service option" shall be defined by an eligible entity for subgrantees of the eligible entity in accordance with subparagraph (B).

(B) DEFINING "LOW-COST BROADBAND SERVICE OPTION".—

(i) PROPOSAL.—An eligible entity shall submit to the Assistant Secretary for approval, in the final proposal of the eligible entity submitted under subsection (e)(4), a proposed definition of "low-cost broadband service option" that shall apply to subgrantees of the eligible entity for purposes of the requirement under paragraph (4)(B) of this subsection.

(ii) CONSULTATION.—An eligible entity shall consult with the Assistant Secretary and prospective subgrantees regarding a proposed definition of "low-cost broadband service option" before submitting the proposed definition to the Assistant Secretary under clause (i).

(iii) APPROVAL OF ASSISTANT SECRETARY.—

(I) IN GENERAL.—A proposed definition of "low-cost broadband service option" submitted by an eligible entity under clause (i) shall not take effect until the Assistant Secretary approves the final proposal of the eligible entity submitted under subsection (e)(4), including approval of the proposed definition of "low-cost broadband service option".

(II) RESUBMISSION.—If the Assistant Secretary does not approve a proposed definition of "low-cost broadband service option" submitted by an eligible entity under clause (i), the Assistant Secretary shall—

(aa) notify the eligible entity and provide the eligible entity with an opportunity to resubmit the final proposal, as provided in subsection (e)(4), with an improved definition of "low-cost broadband service option"; and

(bb) provide the eligible entity with instructions on how to cure the defects in the proposed definition.

(iv) PUBLIC DISCLOSURE.—After the Assistant Secretary approves the final proposal of an eligible entity under subsection (e)(4), and before the Assistant Secretary disburses any funds to the eligible entity based on that approval, the Assistant Secretary shall publicly disclose the eligible entity's definition of "low-cost broadband service option".

(C) NONPERFORMANCE.—The Assistant Secretary shall develop procedures under which the Assistant Secretary or an eligible entity may—

(i) evaluate the compliance of a subgrantee with the requirement under paragraph (4)(B); and

(ii) take corrective action, including recoupment of funds from the subgrantee, for noncompliance with the requirement under paragraph (4)(B).

(D) NO REGULATION OF RATES PERMITTED.—Nothing in this title may be construed to authorize the Assistant Secretary or the National Telecommunications and Information Administration to regulate the rates charged for broadband service.

(E) GUIDANCE.—The Assistant Secretary may issue guidance to eligible entities to carry out the purposes of this paragraph.

(6) RETURN OF FUNDS.—An entity that receives a subgrant from an eligible entity under subsection (f) and fails to comply with any requirement under this subsection shall return up to the entire amount of the subgrant to the eligible entity, at the discretion of the eligible entity or the Assistant Secretary.

(i) REGULATIONS.—The Assistant Secretary may issue such regulations or other guidance, forms, instructions, and publications as may be necessary or appropriate to carry out the programs, projects, or activities authorized under this section, including to ensure that those programs, projects, or activities are completed in a timely and effective manner.

(j) REPORTING.—

(1) ELIGIBLE ENTITIES.—

(A) INITIAL REPORT.—Not later than 90 days after receiving grant funds under this section, for the sole purposes of providing transparency and providing information to inform future Federal broadband planning, an eligible entity shall submit to the Assistant Secretary a report that—

(i) describes the planned and actual use of funds;

(ii) describes the planned and actual process of subgranting;

(iii) identifies the establishment of appropriate mechanisms by the eligible entity to ensure that all subgrantees of the eligible entity comply with the eligible uses prescribed under subsection (f); and

(iv) includes any other information required by the Assistant Secretary.

(B) SEMIANNUAL REPORT.—Not later than 1 year after receiving grant funds under this section, and semiannually

thereafter until the funds have been expended, an eligible entity shall submit to the Assistant Secretary a report, with respect to the 6-month period immediately preceding the report date, that—

(i) describes how the eligible entity expended the grant funds;

(ii) describes each service provided with the grant funds;

(iii) describes the number of locations at which broadband service was made available using the grant funds, and the number of those locations at which broadband service was utilized; and

(iv) certifies that the eligible entity complied with the requirements of this section and with any additional reporting requirements prescribed by the Assistant Secretary.

(C) FINAL REPORT.—Not later than 1 year after an eligible entity has expended all grant funds received under this section, the eligible entity shall submit to the Assistant Secretary a report that—

(i) describes how the eligible entity expended the funds;

(ii) describes each service provided with the grant funds;

(iii) describes the number of locations at which broadband service was made available using the grant funds, and the number of those locations at which broadband service was utilized;

(iv) includes each report that the eligible entity received from a subgrantee under paragraph (2); and

(v) certifies that the eligible entity complied with the requirements of this section and with any additional reporting requirements prescribed by the Assistant Secretary.

(D) PROVISION TO FCC AND USDA.—Subject to section 904(b)(2) of division FF of the Consolidated Appropriations Act, 2021 (Public Law 116-260) (relating to an interagency agreement), the Assistant Secretary shall coordinate with the Commission and the Department of Agriculture, including providing the final reports received under subparagraph (C) to the Commission and the Department of Agriculture to be used when determining whether to award funds for the deployment of broadband under any program administered by those agencies.

(E) FEDERAL AGENCY REPORTING REQUIREMENT.—

(i) DEFINITIONS.—In this subparagraph, the terms "agency" and "Federal broadband support program" have the meanings given those terms in section 903 of division FF of the Consolidated Appropriations Act, 2021 (Public Law 116-260) (also known as the "ACCESS BROADBAND Act").

(ii) REQUIREMENT.—An agency that offers a Federal broadband support program shall provide data to the Assistant Secretary, in a manner and format prescribed by the Assistant Secretary, to promote coordi-

nation of efforts to track construction and use of broadband infrastructure.

(2) SUBGRANTEES.—

(A) SEMIANNUAL REPORT.—The recipient of a subgrant from an eligible entity under this section shall submit to the eligible entity a semiannual report for the duration of the subgrant to track the effectiveness of the use of funds provided.

(B) CONTENTS.—Each report submitted under subparagraph (A) shall—

(i) describe each type of project carried out using the subgrant and the duration of the subgrant;

(ii) in the case of a broadband infrastructure project—

(I) include a list of addresses or locations that constitute the service locations that will be served by the broadband infrastructure to be constructed;

(II) identify whether each address or location described in subclause (I) is residential, commercial, or a community anchor institution;

(III) describe the types of facilities that have been constructed and installed;

(IV) describe the peak and off-peak actual speeds of the broadband service being offered;

(V) describe the maximum advertised speed of the broadband service being offered;

(VI) describe the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;

(VII) include any other data that would be required to comply with the data and mapping collection standards of the Commission under section 1.7004 of title 47, Code of Federal Regulations, or any successor regulation, for broadband infrastructure projects; and

(VIII) comply with any other reasonable reporting requirements determined by the eligible entity or the Assistant Secretary; and

(iii) certify that the information in the report is accurate.

(3) STANDARDIZATION AND COORDINATION.—The Assistant Secretary and the Commission shall collaborate to—

(A) standardize and coordinate reporting of locations at which broadband service was provided using grant funds received under this section in accordance with title VIII of the Communications Act of 1934 (47 U.S.C. 641 et seq.); and

(B) provide a standardized methodology to recipients of grants and subgrantees under this section for reporting the information described in subparagraph (A).

(4) INFORMATION ON BROADBAND SUBSIDIES AND LOW-INCOME PLANS.—

(A) ESTABLISHMENT OF WEBSITE.—Not later than 2 years after the date of enactment of this Act, the Assistant Sec-

retary, in consultation with the Commission, shall establish a publicly available website that—

(i) allows a consumer to determine, based on financial information entered by the consumer, whether the consumer is eligible—

(I) to receive a Federal or State subsidy with respect to broadband service; or

(II) for a low-income plan with respect to broadband service; and

(ii) contains information regarding how to apply for the applicable benefit described in clause (i).

(B) PROVISION OF DATA.—A Federal entity, State entity receiving Federal funds, or provider of broadband service that offers a subsidy or low-income plan, as applicable, with respect to broadband service shall provide data to the Assistant Secretary in a manner and format as established by the Assistant Secretary as necessary for the Assistant Secretary to carry out subparagraph (A).

(k) RELATION TO OTHER PUBLIC FUNDING.—Notwithstanding any other provision of law—

(1) an entity that has received amounts from the Federal Government or a State or local government for the purpose of expanding access to broadband service may receive a subgrant under subsection (f) in accordance with this section; and

(2) the receipt of a subgrant under subsection (f) by an entity described in paragraph (1) of this subsection shall not affect the eligibility of the entity to receive the amounts from the Federal Government or a State or local government described in that paragraph.

(l) SUPPLEMENT NOT SUPPLANT.—Grant funds awarded to an eligible entity under this section shall be used to supplement, and not supplant, the amounts that the eligible entity would otherwise make available for the purposes for which the grant funds may be used.

(m) SENSE OF CONGRESS REGARDING FEDERAL AGENCY COORDINATION.—It is the sense of Congress that Federal agencies responsible for supporting broadband deployment, including the Commission, the Department of Commerce, and the Department of Agriculture, to the extent possible, should align the goals, application and reporting processes, and project requirements with respect to broadband deployment supported by those agencies.

(n) JUDICIAL REVIEW.—

(1) IN GENERAL.—The United States District Court for the District of Columbia shall have exclusive jurisdiction to review a decision of the Assistant Secretary made under this section.

(2) STANDARD OF REVIEW.—In carrying out any review described in paragraph (1), the court shall affirm the decision of the Assistant Secretary unless—

(A) the decision was procured by corruption, fraud, or undue means;

(B) there was actual partiality or corruption in the Assistant Secretary; or

(C) the Assistant Secretary was guilty of—

(i) misconduct in refusing to review the administrative record; or

(ii) any other misbehavior by which the rights of any party have been prejudiced.

(o) EXEMPTION FROM CERTAIN LAWS.—Any action taken or decision made by the Assistant Secretary under this section shall be exempt from the requirements of—

(1) section 3506 of title 44, United States Code (commonly referred to as the "Paperwork Reduction Act");

(2) chapter 5 or 7 of title 5, United States Code (commonly referred to as the "Administrative Procedures Act"); and

(3) chapter 6 of title 5, United States Code (commonly referred to as the "Regulatory Flexibility Act").

* * * * * * *

MINORITY VIEWS

In November 2021, President Biden signed into law the Infrastructure Investment and Jobs Act, or the "Bipartisan Infrastructure Law," which made historic and long overdue investments in surface transportation, energy, healthcare, and communications infrastructure. These investments included $42.45 billion for the Broadband Equity, Access, and Deployment Program to deploy broadband infrastructure to Americans who lack reliable access to high-speed internet service. These investments will do more to connect the unconnected than any previous congressional action ever has, and Congress and the Energy and Commerce Committee should focus on maximizing these dollars and ensuring projects are carried out as efficiently and expeditiously as possible.

Committee Democrats do not dispute that there are barriers in the way of deploying broadband infrastructure. H.R. 3557 addresses none of them, unfortunately. If the Republican Majority adhered to the regular order process that the Energy and Commerce Committee typically observes, Members could have worked in a bipartisan fashion to develop legislation that addresses the concerns that all witnesses raised at the legislative hearing—most notably, the lack of adequate resources and qualified personnel to review permit applications at Federal agencies. Instead, the Republican Majority rushed directly to a legislative hearing on dozens of partisan bills, presupposing a handful of misguided legislative "solutions" in search of problems that compose H.R. 3557, as reported by the Energy and Commerce Committee.

H.R. 3557 regrettably proposes to eliminate standard environmental and historic preservation reviews that simply do not affect the overwhelming majority of communications infrastructure projects in the manner suggested by Republicans. With respect to the application of the National Environmental Policy Act (NEPA), many projects to deploy communications infrastructure already qualify for expedited approval under existing categorical exclusions, which Federal agencies maintain to alleviate requirements for predetermined activities that do not have a significant environmental impact. If a proposed deployment project does not meet the parameters of an existing categorical exclusion, the grant recipient is still able to obtain approval after submitting an Environmental Assessment and receiving a Finding of No Significant Impact. There is little evidence to suggest that communications infrastructure deployment projects regularly trigger the highest level of scrutiny under NEPA and require applicants to develop and submit an Environmental Impact Statement, and certainly not enough to warrant the blanket NEPA exemptions proposed in H.R. 3557.

Perhaps most troubling are provisions in H.R. 3557 which propose to eliminate local communities' roles in decision-making over the placement and construction of utility infrastructure. The bill

imposes heavy-handed "deemed granted" provisions on local governments by setting narrow and arbitrary deadlines to approve requests to install communications infrastructure in areas managed by county or municipal governments. The 60-day "shot clock" to approve or deny an application implies an unfamiliarity with the realities of local government calendars and processes built around sunshine laws that many local governments follow to ensure transparency and provide residents with sufficient opportunity to be heard on important community matters. While the Republican Majority seems intent on helping big corporations evade scrutiny in communities they wish to serve, Democrats understand that mayors, councils, and local boards represent the best interests of their constituents and disagree with attempts by Republicans to constrain their ability to do so.

Local officials are responsible for ensuring the safety and welfare of residents and efforts by House Republicans to automatically approve certain construction projects that have not been approved by regular local government processes will put people in harm's way. Communications providers that proceed with construction without the proper approvals from state, county, or municipal governments should recognize the liability they expose themselves to in doing so. These are just some of the reasons why H.R. 3557 is opposed by the National League of Cities, United States Conference of Mayors, the National Association of Counties, and the National Association of Telecommunications Officers and Advisors.

The most effective action the Committee Republicans could have taken to expedite the deployment of high-speed internet to rural communities was to vote for the Bipartisan Infrastructure Law, which no current member of the Republican Majority did.

FRANK PALLONE, Jr.
Ranking Member, Energy and Commerce Committee.

EXCHANGE OF LETTERS

BRUCE WESTERMAN OF ARKANSAS
CHAIRMAN

VIVIAN MOEGLEIN
STAFF DIRECTOR

RAÚL M. GRIJALVA OF ARIZONA
RANKING DEMOCRAT

LORA SNYDER
DEMOCRAT STAFF DIRECTOR

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

September 29, 2023

The Honorable Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce
2515 Rayburn House Office Building
Washington, DC 20515

Dear Chair McMorris Rodgers:

I write regarding H.R. 3557, the *American Broadband Deployment Act of 2023*. The bill was referred primarily to the Committee on Energy and Commerce, with additional referrals to the Committee on Natural Resources and the Committee on Transportation and Infrastructure. Specifically, there are certain provisions of H.R. 3557 that fall within the Rule X jurisdiction of the Committee on Natural Resources.

I recognize and appreciate your desire to bring this legislation before the House of Representatives in an expeditious manner, and accordingly, agree that the Committee on Natural Resources shall be discharged from further consideration of the bill. However, this is conditional on our mutual understanding that by forgoing consideration of H.R. 3557 at this time, we do not waive any jurisdiction over the subject matter contained in this or similar legislation that falls within the Committee on Natural Resources' Rule X jurisdiction, and that the Committee will be appropriately consulted and involved on this or similar legislation as it moves forward. Further, this does not prejudice the Committee on Natural Resources with respect to the appointment of conferees and should a conference on the bill be necessary, I appreciate your agreement to support my request to have the Committee represented on the conference committee.

Finally, I would ask that a copy of this letter and your response acknowledging the jurisdictional interest of the Committee on Natural Resources in the bill be included in the *Congressional Record* during consideration of H.R. 3557 on the House floor.

Sincerely,

Bruce Westerman
Chairman
Committee on Natural Resources

cc: The Honorable Kevin McCarthy, Speaker of the House
The Honorable Frank Pallone, Ranking Member, Committee on Energy and Commerce
The Honorable Raul Grijalva, Ranking Member, Committee on Natural Resources
The Honorable Jason Smith, Parliamentarian, U.S. House of Representatives

CATHY McMORRIS RODGERS, WASHINGTON
CHAIR

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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Majority (202) 225-3641
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September 29, 2023

The Honorable Bruce Westerman
Chairman
Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Westerman:

Thank you for your letter regarding H.R. 3557, the "American Broadband Deployment Act of 2023," which was referred in addition to the Committee on Natural Resources. I appreciate your agreement that the bill shall be discharged from further consideration so that it may proceed expeditiously to the House floor.

I understand and agree that the Committee takes this action with the understanding that foregoing further consideration of this measure does not in any way alter the Committee's jurisdiction or waive any future jurisdictional claim over these provisions or their subject matter. I also understand the Committee reserves the right to seek appointment of an appropriate number of conferees in the event of a conference with the Senate involving this measure or similar legislation.

Finally, I will insert our exchange of letters in the Congressional Record during consideration of H.R. 3557 on the House floor.

Thank you for your accommodation in this matter.

Sincerely,

Cathy McMorris Rodgers
Chair

Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Sam Graves
Chairman

Jack Ruddy, Staff Director

Rick Larsen
Ranking Member

Katherine W. Dedrick, Democratic Staff Director

September 6, 2023

The Honorable Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC, 20515

Dear Chair McMorris Rodgers:

I am writing to you concerning H.R. 3557, the *American Broadband Deployment Act of 2023*. The bill was referred primarily to the Committee on Energy and Commerce, with an additional referrals to the Committee on Transportation and Infrastructure and the Committee on Natural Resources. Specifically, there are certain provisions of H.R. 3557 that fall within the Rule X jurisdiction of the Committee on Transportation and Infrastructure.

I recognize and appreciate your desire to bring this legislation before the House of Representatives in an expeditious manner, and accordingly, agree that the Committee on Transportation and Infrastructure shall be discharged from further consideration of the bill. However, this is conditional on our mutual understanding that by foregoing consideration of H.R. 3557 at this time we do not waive any jurisdiction over the subject matter contained in this or similar legislation that falls within the Committee on Transportation and Infrastructure's Rule X jurisdiction, and that the Committee will be appropriately consulted and involved on this or similar legislation as it moves forward. Further, this does not prejudice the Committee on Transportation and Infrastructure with respect to the appointment of conferees and should a conference on the bill be necessary, I appreciate your agreement to support my request to have the Committee represented on the conference committee.

Finally, I would ask that a copy of this letter and your response acknowledging our jurisdictional interest in the bill be included in the Committee Report and *Congressional Record* during consideration of H.R. 3557 on the House floor.

Sincerely,

Sam Graves
Chairman
Transportation and Infrastructure Committee

cc: The Honorable Kevin McCarthy, Speaker
The Honorable Rick Larsen, Ranking Member, Committee on Transportation and Infrastructure
The Honorable Frank Pallone, Ranking Member, Committee on Energy and Commerce
The Honorable Jason Smith, Parliamentarian

CATHY McMORRIS RODGERS, WASHINGTON
CHAIR

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
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Majority (202) 225-3641
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September 6, 2023

The Honorable Sam Graves
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Graves:

Thank you for your letter regarding H.R. 3557, the "American Broadband Deployment Act of 2023," which was referred in addition to the Committee on Transportation and Infrastructure. I appreciate your agreement that the bill shall be discharged from further consideration so that it may proceed expeditiously to the House floor.

I understand and agree that the Committee takes this action with the understanding that foregoing further consideration of this measure does not in any way alter the Committee's jurisdiction or waive any future jurisdictional claim over these provisions or their subject matter. I also understand the Committee reserves the right to seek appointment of an appropriate number of conferees in the event of a conference with the Senate involving this measure or similar legislation.

Finally, I will insert our exchange of letters in the Congressional Record during consideration of H.R. 3557 on the House floor.

Thank you for your accommodation in this matter.

Sincerely,

Cathy McMorris Rodgers
Chair

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