

STANDARD FEES TO EXPEDITE EVALUATION AND STREAMLINING ACT

OCTOBER 25, 2023.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 3309]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3309) to amend the Middle Class Tax Relief and Job Creation Act of 2012 to establish a uniform fee schedule applicable to the processing of forms for the consideration of applications for the placement of communications facilities on certain buildings and other property owned by the Federal Government, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 3309, the “Standard Fees to Expedite Evaluation and Streamlining (FEES) Act,” would direct the General Services Administration to establish a uniform fee schedule for the processing and consideration of applications to place communications facilities on federal property.

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 Many of these unserved locations are near property owned by the federal government. Thus, a broadband provider seeking to serve an unserved area may need to access this property to deploy its infrastructure. This property is managed by agencies such as the Department of Interior and Department of Agriculture, which are responsible for reviewing applications for broadband deployment on this property.

Federal agencies assess fees for reviewing applications and using their land. These fees, however, vary by agency and may not be publicly available or disclosed in advance of a communications provider applying for a permit. Only two major land management agencies, the Bureau of Land Management² and the U.S. Forest Service,³ have adopted a publicly available fee schedule, and these only apply to rental fees. The unpredictable and inconsistent fees broadband providers face make planning for deployment difficult. A standard fee schedule would provide broadband providers with certainty about the fees they must pay the federal government when deploying on federal property.⁴ Providers will know the fees in advance and have assurance that they are consistent regardless of the agency.

COMMITTEE ACTION

On April 19, 2023, the Subcommittee on Communications and Technology held a hearing on several pieces of legislation, including a discussion draft titled the “Standard Fees to Expedite Evaluation and Streamlining” or “Standard FEES Act.” The title of the hearing was “Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment.” The Subcommittee received testimony from:

- Michael Romano, Executive Vice President, NTCA—The Rural Broadband Association;

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 Bureau of Land Mgmt., Rental Fee Schedule for Communications Uses, Calendar Year 2023 (2023), <https://www.blm.gov/sites/default/files/docs/2022-09/2023%20Rental%20Fee%20Schedule%20for%20Communications%20Uses.pdf>.

³ U.S. Forest Service, Rental Fee Schedule for Communications Uses, Calendar Year 2023 (2023), <https://www.fs.usda.gov/sites/default/files/rental-fee-schedule-for-communications-uses-2023.pdf>.

⁴ *Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment, Hearing before the Sub. on Comm’n. and Tech., H. Comm. on Energy and Commerce*, 118th Cong. (2023) (“Permitting Hearing”) (Written Testimony of Ernesto Falcon at 12).

- 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.

H.R. 3309 was introduced on May 15, 2023, by Representative Gary Palmer (R–AL) and Representative Patrick Ryan (D–NY).

On May 17, 2023, the Subcommittee on Communications and Technology met in open markup session and forwarded H.R. 3309, without amendment, to the full Committee by a voice vote. On May 24, 2023, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 3309, without amendment, favorably reported to the House by a record vote of 50 yeas and 0 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 # 8**

BILL: H.R. 3309, the “Standard Fees to Expedite Evaluation and Streamlining Act” or “Standard FEES Act”

AMENDMENT: A motion by Rep. Rodgers to order H.R. 3309 favorably reported to the House, without amendment. (Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 50 yeas to 0 nays.

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

05/24/2023

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. 3309 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. 3309 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. 3309:

- On April 19, 2023, the Subcommittee on Communications and Technology held a hearing on several pieces of legislation, including a discussion draft titled the “Standard Fees to Expedite Evaluation and Streamlining” or “Standard FEES Act.” The title of the hearing was “Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment.” The Subcommittee received testimony 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. 3309 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

This section provides that the Act may be cited as the “Standard Fees to Expedite Evaluation and Streamlining Act” or the “Standard FEES Act.”

Section 2. Establishment of uniform fee schedule applicable to the processing of certain forms

Subsection (a) would amend Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1455) by inserting a new subsection (d).

The new subsection (d)(1) of Section 6409 would direct the Administrator of General Services to establish a uniform schedule of fees for the processing of applications to deploy communications facilities on federal property.

Subsection (d)(2) would establish the guidelines for the new fee schedule. These guidelines would require the fees to be based on the direct costs incurred by an agency for processing an application and require that the fees be competitively neutral.

Subsection (d)(3) would permit exceptions to the fee schedule that are:

- Competitively neutral regarding the individuals or entities receiving the exception;
- In consideration of the public benefit of granting access to the federal property or for entering into a contract for the

placement of the communications facility on federal property; and

- In the interest of expanding broadband deployment.

Subsection (d)(4) would require the head of each executive agency to adopt by regulation the fees that correspond to the new fee schedule and any exceptions established to that fee schedule.

Under subsection (d)(5), any fee collected by an executive agency would only be available to the extent, and in such amounts, as are provided in advance in appropriation Acts, to the agency to cover the costs of processing the application. In other words, the agency may not use the fees collected for any purpose Congress has not previously appropriated.

Subsection (d)(6) would state that any fee charged under this fee schedule would supersede any other fee applicable to the processing of an application to deploy a communications facility on federal land chargeable under another statute.

Subsection (b)(1) of H.R. 3309 would direct the Administrator of the GSA to establish the fee schedule required under this Act within 30 days of enactment.

Subsection (b)(2) would direct executive agencies to adopt the fees and exceptions required under this Act within 120 days of establishment by the Administrator of the GSA.

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):

MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012

* * * * *

TITLE VI—PUBLIC SAFETY COMMUNICATIONS AND ELECTROMAGNETIC SPECTRUM AUCTIONS

* * * * *

Subtitle D—Spectrum Auction Authority

* * * * *

SEC. 6409. WIRELESS 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.

(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.

(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 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.

(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) COMMON FEE SCHEDULE.—

(1) IN GENERAL.—*The Administrator of General Services shall establish a uniform schedule of fees applicable to the processing of the forms described under subsections (b)(2) and (c)(3).*

(2) FEE GUIDELINES.—*The schedule of fees established under paragraph (1) shall be—*

(A) based on the direct costs incurred by an agency in processing a form described under subsection (b)(2) or (c)(3); and

(B) competitively neutral with respect to any fee established for the processing of a form for a similar use of the building or other property owned by the Federal Government.

(3) *EXCEPTIONS.*—The Administrator of General Services may establish exceptions to the schedule of fees established under paragraph (1)—

(A) that are competitively neutral with respect to the categories of individuals or entities to be granted the exception;

(B) in consideration of the public benefit of—

(i) granting an easement, right-of-way, or lease described under subsection (b)(1); or

(ii) entering into a contract for the placement of a communications installation facility under subsection (c)(1); and

(C) in the interest of expanding the deployment of broadband internet access service, as defined in section 8.1(b) of title 47, Code of Federal Regulations (or any successor regulation).

(4) *ADOPTION BY EXECUTIVE AGENCIES.*—

(A) *IN GENERAL.*—The head of each executive agency shall adopt by regulation—

(i) fees that correspond to the schedule established by the Administrator under paragraph (2); and

(ii) any exceptions to such schedule established by the Administrator under paragraph (3).

(B) *EXCEPTIONS.*—The head of an executive agency may only grant an exception pursuant to subparagraph (A)(ii) on a case-by-case basis.

(5) *USE OF FEES COLLECTED.*—Any fee collected by an executive agency under this section shall only be available to the extent, and in such amounts, as are provided in advance in appropriation Acts, to the agency to cover the costs of processing the forms described under subsection (b)(2) and (c)(3).

(6) *RELATIONSHIP TO OTHER STATUTES.*—Any fee chargeable under this subsection shall supercede any other fee applicable to the processing of a form described under subsection (b)(2) or (c)(3) that is chargeable under another statute.

[(d)] (e) *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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