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Before

House Committee on Natural Resources:
Subcommittee on Federal Lands

Re: HR 4824 – Rural Broadband Permitting Efficiency Act

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Good morning Mr. Chairman and members of the subcommittee. Thank you for the opportunity to testify. My name is Sharon Buccino. I am senior attorney at the Natural Resources Defense Council (NRDC). NRDC is a nonprofit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 3 million members and online activists nationwide, served from six offices across the country.

Vision

I'd like to start where I think we agree: (1) Everyone deserves fast and reliable broadband service. (2) Our public lands are part of what makes America great. I offer three suggestions to increase rural broadband deployment while preserving the beauty and economic value of America's public lands.

Value of Public Participation

The right to participate in government decisions that affect our daily lives is at the core of our democratic government. It is at the heart of what it means to have government "for the people, by the people." The right to participate is enshrined in the laws that govern the operation of federal agencies such as the Environmental Protection Agency and the Department of the Interior. Federal laws like the National Environmental Policy Act (NEPA) provide a say in federal decisions to everyone no matter where they live or how much they earn.

In addition to NEPA, two laws provide a public process for actions that affect the public lands. The Federal Land Policy and Management Act (FLPMA) passed with bipartisan support in 1976 governs actions by the Bureau of Land Management (BLM). The National Forest

Management Act – also enacted in 1976 with bipartisan support – governs actions by the U.S. Forest Service. These laws are designed to ensure that each one of us benefits from our public lands. They allow for a variety of uses of our public lands, but do so in a way that is intended to avoid abuse or favoritism. These agencies serve as stewards, managing the land for the benefit of all of us – including future generations – and not simply for the profit of a few.

The proposed legislation eliminates the right to participate guaranteed by existing law. Under Sec. 4 of the bill, a state may assume "all or part of the responsibilities" of both the Secretary of the Interior or the Secretary of Agriculture for "environmental review, consultation, or other action required under any Federal law pertaining to the review or approval of a specific operational right-of-way broadband project." While the law provides that the State "shall be subject to the same procedural and substantive requirements as would apply if the responsibility were carried out by the Secretary concerned," the law fails to specify how this would happen. Will a State provide the same national notice and opportunity to participate in decision making that BLM and the Forest Service currently provide? Would a State be held accountable to standards of performance specified by the Council on Environmental Quality's (CEQ's) NEPA regulations and federal judicial precedent? Will citizens be able to sue a State in federal court if the State fails to provide the same rights to participate that are currently available? As drafted, HR 4824 creates confusion and uncertainty that promises to worsen – rather than improve – efficiency in permitting.

The bill's proposed categorical exclusion for "any project within an existing operational right-of-way" also compromises the public's opportunity to influence the siting of broadband. The bill's definition of "operational right-of-way" is extremely broad. It includes:

> all real property interests (including easements) acquired for the construction or operation of a project, including the locations of the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, copper and fiber optic lines, utility shelters, and broadband infrastructure as installed by broadband providers, and any rest areas with direct access to a controlled access highway or the National Highway System.

Sec. 3(3). Significantly, this categorical exclusion applies to "any project" and is not limited to deployment of wireless infrastructure on public lands. At times, for example, the Secretary of the Interior issues regulations and takes action that applies to tribal lands. Would the required categorical exclusion cover projects on tribal lands? As drafted, HR 4824 fails to provide a clear answer.

Some existing rights-of-way may be just the place to site wireless infrastructure. If telephone poles and power lines already exist along a right of way, it may very well minimize additional impact to site new infrastructure in the existing right-of-way. Some existing rights-of-way, however, may involve little or no ground disturbance. Others may have been disturbed previously, but the land has been restored even though the right-of-way still exists. The blanket exclusion fails to distinguish where the impact might be minimal from circumstances in which it might not.

Existing law provides for categorical exclusions where evidence demonstrates that an activity by its nature will have a minimal effect on the environment. The Department of the Interior, for example, has existing categorical exclusions for various activities. 43 C.F.R. § 46.210. Significantly, agencies with categorical exclusions provide for extraordinary circumstances. These extraordinary circumstances include the presence of historic or cultural resource, a threatened or endangered species, a wilderness area or designated wildlife preserve or impacts to a drinking water aquifer. *See, e.g.,* 43 C.F.R. § 46.215. The identification of extraordinary circumstances addresses conditions under which an activity that normally would cause minimal harm may cause significant harm. *See* CEQ, *Final Guidance for Federal Departments and Agencies on Establishing, Applying and Revising Categorical Exclusions under the National Environmental Policy Act*, 75 Fed. Reg. 75628 (Dec. 6, 2010). As introduced, HR 4824 fails to provide for such extraordinary circumstances.

Importance of Adequate Resources

We do not need to sacrifice the beauty of our public lands or the character of our communities to deploy rural broadband rapidly. The solution is to provide the resources necessary to get the reviews done rather than eliminate public participation and environmental review. Several bills pending before Congress provide such resources. HR 4847 introduced by Rep. Brooks (R-IN) and Matsui (D-CA) provides for fees to be collected by the Department of the Interior for processing rights-of-way applications for towers and other telecommunications infrastructure. The fees are based on the costs to the agency of processing and any necessary maintenance of the approved facilities. These costs could cover the ecological, archeological and cultural expertise needed. The bill provides that the fees collected would go to the agency processing the applications rather than to the general U.S. Treasury.

In HR 2425, Rep. Huffman (D-CA) goes a step further in providing that the fees include a rental amount for the use of the public lands for commercial profit in addition to covering the agency costs to process right-of-way applications. Such rental fees are required to lease land for oil and gas drilling as well as coal mining. There is no reason not to require them for companies making a profit off public lands by providing telecommunication services.

Fairness of Equal Access

Permitting delays are not the fundamental obstacle to getting high-speed internet to rural communities. Economics is. Companies like Sprint, Verizon and AT&T want to invest where population density is the greatest. This allows these companies to spread fixed infrastructure costs over large numbers of customers. A free market will not deliver broadband to rural communities and isolated homes even if all permitting requirements are eliminated.

Providing access to unprofitable rural areas should be a condition of receipt of federal funds or the right to use public lands for broadband deployment. Rep. Vicky Hartzler (R-MO) has proposed including such incentives in the Farm Bill currently under consideration. Rep. Brooks and Matsui's bill – HR 4847 – includes something similar. It requires the government to consider and grant rights-of-ways based on a "competitively neutral, technology neutral and

non-discriminatory basis." Rep. Huffman's (D-CA) bill from last Congress – HR 4160 – creates a preference for federal loans and guarantees for telecommunication services like broadband that serve multi-jurisdictions. I recommend including similar language in HR 4824 to require the universal service that rural communities deserve. Our nation has chosen to require such universal service for telephones. It should do so for wireless as well.

Eliminating public participation and environmental review for broadband siting removes important leverage that both the federal and local governments hold to ensure access to broadband. The public participation process provided by NEPA and other federal laws is what gives local voices a say in where wireless infrastructure is sited. By categorically excluding such infrastructure – both on and off federal lands – from NEPA's review, the wealthiest and biggest telecommunication companies get a green light to site their towers and other facilities wherever they want. Rural communities will continue to lose.

Conclusion

To end, I'll come back to where I started – our common vision of an equitable and vibrant future for all. Americans deserve rapid rural broadband deployment. But they shouldn't have to sacrifice their say in government decisions to get it. Instead of changing who does the review, Congress should provide for sufficient funding to allow BLM and the Forest Service to complete the review in a timely manner. The most appropriate source of such funds are the companies seeking to profit from using the public's land. NRDC supports the efforts of Committee members to provide for such fees as in HR 2425. We encourage Rep. Curtis and his co-sponsors to consider something similar in HR 4824.

Thank you again for your consideration of these important issues and for the opportunity to participate in this hearing.