

**Before the
Forest Service, USDA
Washington, D.C. 20250**

In the Matter of)	
)	
Land Uses; Special Uses; Annual)	RIN 0596-AD44
Programmatic Administrative Fee)	
for Communications Use Authorizations)	
)	

**COMMENTS of
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (WTA) submits these comments to the Forest Service, USDA on the subject of its Proposed Rule on implementing annual programmatic administrative fees for communications use authorizations.¹

WTA is a national trade association representing more than 360 rural telecommunications providers offering broadband, voice, and video-related services in communities across rural America. WTA members serve some of the most rugged, remote, and sparsely populated areas of the United States. Their primary service areas are comprised of rural farming and ranching regions, isolated mountain and desert communities, and Native American lands. They are a mix of privately-owned (usually family-owned) companies and cooperatives and generally serve fewer than 5000 customers.

Many of the companies WTA represents serve territories that abut or overlap U.S. National Forests. They often have to seek permits from the Forest Service to bury fiber,

¹ 86 FR 72540, Docket No. RIN 0596-AD44, December 22, 2021. (Proposed Rule)

string fiber on poles, or place wireless equipment on towers on National Forest land, thus their interest in this proceeding. This is particularly true for those companies that provide service in the western half of the country.

Significant Delays Are Common

The coronavirus pandemic has laid bare the need for all Americans to have access to high-speed broadband and made obvious the educational, economic, and healthcare benefits of being connected. The length of time it takes to receive an answer to a permit application significantly delays vital broadband buildout to unserved households, businesses, and emergency coordination sites². Unfortunately, WTA's member companies report experiencing significant delays in getting approval to gain access to Forest Service land. Those companies that apply for permits to place facilities on National Forest land report that a 12 to 24-month approval process is expected and permitting processes lasting longer than two years can even occur. The following are some anecdotal examples provided by WTA's member companies that have submitted complete permit applications:

- A company has a master communications use lease for 25 sites that expired in 2019. In September of 2018, the company contacted the Forest Service to begin the renewal process and is still waiting for a formal approval.
- It took a company nearly 18 months to receive a permit to string 150 yards of fiber on existing power lines through a National Forest.

² In forested areas out west, with the increasingly prevalence of fires, there is a need to get permits processed quickly so emergency personnel can communicate and nascent fires can be spotted and reported before they get larger.

- A company applied for a permit to bury 120 feet of fiber in February of 2018 in previously disturbed ground in a National Forest. It did not receive the permit until October 2019.
- A company applied to place a radio repeater on an existing cement pad and was turned down despite another user having a similar device on the same spot. Regardless of the outcome, it took the Forest Service two years to disapprove this permit.
- A company has an existing application use permit for conduit that is already in the ground, but had to file a permit to put new fiber through it. The company applied in fall of 2018, hoping to get the work completed by summer of 2019. The permit was approved in October of 2020, which, because of the short construction season, delayed construction until 2021.
- A company received a Rural Utilities Service (RUS) ReConnect award to build fiber to several communities near National Forests. The permit application process began in October 2020, and the company has yet to receive either an approval or denial determination because of environmental and historic preservation concerns. The agencies involved have been unclear with the company about what is causing the delay. Because of the way the rules for ReConnect are written, the entire project must wait until these issues are resolved. At this rate, the company anticipates it will not have service installed until the end of 2023.
- A company needed to increase the size of a microwave antenna, which merely requires a larger dish and reinforcement of the existing tower. The height of the tower did not need to be increased, yet it took 12 months to receive approval.

- It took two years for a company to receive approval to bury eight miles of fiber along an existing power line corridor in a National Forest.
- A company waited 12 months for the Forest Service to grant approval to string one mile of fiber on existing electric utility poles on National Forest land.
- A company waited over a year to get approval to access existing conduit to bring fiber to a hotspot in a National Forest.

These are just some of the examples of the delays that small, rural broadband providers must deal with when planning broadband projects. In the vast majority of cases, the permit applications are not to bury fiber in previously undisturbed forest land or erect a tower where none exists today. If it took a year or more to get approval in some of those cases, it would be understandable. But these are requests to dig or build in areas that have already been disturbed and conduit or other facilities are already in place.

The Forest Service Should Create Accountability Measures to Accompany New Fees

According to the Proposed Rule, the Forest Service will begin to charge annual administrative fees of \$1,400 for wireless facility and \$400 for fiber-optic cable communications use authorizations as required by 43 U.S. Code § 1761a. While no one likes to see new or additional fees imposed, the proposed rule indicates that the new fees will be put toward reducing “the backlog of expired communications use authorizations, streamlining program implementation, enhancing automated applications” and hiring and training additional personnel. The Proposed Rule states that these fees will result in a “more modernized, efficient, and enhanced communications use program, thereby

enhancing deployment of wireless and wired communications services.” The promise of greater efficiency is encouraging, but in order to ensure this happens, the Forest Service should implement new accountability measures along with the new fees.

The Proposed Rule states that the Forest Service plans to review the new fees within five years of when they go into effect and at least every five years after that. Along with a review of the fees, the Forest Service should report to the public on the number of permit applications it has received, how many it has approved and denied, and how long it has taken the Agency to process them. This would serve both as a motivational tool for the Agency and an accountability measure for the people it is serving.

In addition to reporting on progress made in improving efficiency, the Forest Service should set goals for action on permits. This would provide applicants some idea of what to expect so that they can better coordinate with the various entities (other federal, state, and local agencies, companies, contractors, etc.) involved in broadband deployment. WTA members are often recipients of grant funding from other federal and state programs. Nearly all these funds come with buildout timelines. More stringently, U.S. Department of Agriculture broadband funding must be approved for dispersal within the fiscal year it is awarded. It is important that telecommunications providers have a sense of how long permitting will take before taking on legally-binding obligations.

Ideally, the Forest Service should implement a 60 to 90-day shot clock for communications use applications seeking to make use of existing rights-of-way or previously disturbed National Forest land. Barring emergencies (natural disasters, government shutdowns, extreme winter weather, etc.), the Forest Service should be able to inspect a site and process the necessary paperwork within several months. Broadband

projects are relatively straightforward and use tested construction methods. Once in place, there is little to no risk of environmental contamination compared with other types of use permits. Once a completed application is received by the Agency it should commit to providing an approval or denial, with a reason for that denial, within that time period. If a project has not been approved or denied within the time period, it should be considered granted.

A final recommendation is to ensure that the revenue generated from the new fees finds its way back to the local offices that do the physical work of inspecting the sites. One of our member companies reports that the local Forest Service office tells them the Forest Service does not have adequate staffing to handle the current workload. Another reported that there was at least a four-month delay of their application because a Forest Service employee left or retired and there wasn't sufficient staffing to pick up the work. We hope that the additional staff envisioned by the restructuring due to the fees will result in more employees in local Forest Service offices.

Conclusion

WTA's member companies work hard to bring high speed broadband to the communities they serve. Exceptionally long, indeterminate periods of time spent waiting for the Forest Service to approve or deny communication use applications complicates projects, increase costs unnecessarily, and ultimately makes Americans wait longer to gain access to vital communications services. When implementing the new, Congressionally-mandated fees, it should also hold itself accountable to the promises made in the Proposed

Rule by reporting on steps it has taken to improve efficiency, publishing expected wait times, and instituting a shot clock.

Respectfully submitted,

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