Advocates for Rural Broadband
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Gregory Zerzan
Acting Solicitor
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RE: Department of the Interior RFI - Docket No. DOI-2025-0005

Dear Mr. Zerzan:

WTA – Advocates for Rural Broadband ("WTA") is submitting these comment in response to the Department of the Interior ("DOI") Request for Information seeking suggestions for regulations and practices that can be modified or repealed to achieve significant reductions in regulatory burdens without compromising the DOI's statutory obligations.[1] WTA is a national trade association representing approximately 400 rural local telecommunications carriers ("RLECs") from across the country that provide voice, broadband and other services to some of the most remote, rugged, sparsely populated, and expensive-to-serve areas of the United States.

WTA welcomes the DOI's efforts to improve its regulations and procedures so as to minimize burdens on the public. WTA's comments focus on right-of-way and permitting regulations, processes and requirements that needlessly delay and significantly increase the costs incurred by our members when they seek to deploy broadband service in rural areas. WTA members have been deploying fiber optic service for decades, and those efforts have been accelerated (and will continue to accelerate) as a result of various State and Federal broadband-related programs, including the Broadband Equity, Access and Deployment ("BEAD") program, the Federal Communications Commission's ("FCC") Universal Service program and the Department of Agriculture's ReConnect program. Fiber deployment in rural areas is critical for precision agriculture, economic development, remote education, telehealth and for supporting advanced mobile services, public safety and community anchor institutions like schools, libraries and hospitals. Thus, DOI actions that will help foster and accelerate rural broadband deployment will well serve the public interest.

[1] Docket No. DOI-2025-0005*, Federal Register*, Vol. 90 at pp. 21504-21506, May 20, 2025.

Overly Burdensome Regulations and Procedures

Following the release of this Request for Information, WTA sought input from its members with regard to negative and positive experiences they have had with the DOI and its bureaus, including the Bureau of Land Management ("BLM"), the National Park Service and the Fish & Wildlife Service. Our members indicated that one of the critical roadblocks to timely deployment of new fiber networks is acquisition of the necessary permits and rights-of-way, including from Federal agencies such as DOI. The members identified several problems that they have encountered in trying to maneuver their way through the regulatory processes.

WTA members reported experiencing significant delays in the permitting processes with the BLM. Members in Alaska indicated that with the short construction season, it will typically take at least two years to complete a fiber deployment project, but that even before they can begin it takes a year or two to receive the necessary BLM (and other local and federal) permits/approvals. And some of the BLM permitting delays are exceedingly frustrating because they appear to be completely unnecessary. According to several WTA members, BLM will tell applicants their permit request was approved, but the service provider will still have to have to wait 30-to-45 days just to get the written approval before being able to then start the right-of-way ("ROW") process with BLM. In addition, if there are any changes to the project, the permitting process restarts at the beginning. For example, one member had a project where the BLM suggested it be moved to the opposite side of the road, and the process had to start all over again. Members also complained that deadlines for the agencies to take action included in regulations or agreements with the agencies were ignored. Moreover, even in instances where the route covers areas that were previously disturbed such as roads or utility corridors, new surveys, historic/cultural reports and extensive reviews are still required.[2]

Another problem that exacerbates the costs and impact of delays is the lack of coordination amongst the different governmental entities that may be reviewing the permit or ROW applications. Members reported delays and redundancies in instances where a Department of Agriculture's Rural Utility Service ("RUS") project also necessitated BLM reviews and approvals, even where only a small portion of the project involved BLM lands. A member cited one projects where there was 1000 feet of BLM crossings, and this delayed the commencement of the project for two years because they had to wait for this single BLM permit. In this instance, members also noted a dispute between which was the lead agency having led to major delays -- BLM sought to be the lead agency despite the fact that the BLM portion of this project was relatively small and RUS was the federal agency from which the project funding was sourced. Likewise, BLM has insisted on reviewing all of a project's route, even when RUS has already approved the non-BLM portions of that route. Members have also run into situations

[2] On the other hand, a member reported positive experiences when dealing with the Fish & Wildlife Service and the National Park Service when the projects utilize existing ROW.

with needing both RUS and BLM environmental approvals, and the two agencies have divergent lists of species or plants that require more detailed assessments. Similarly, BLM and RUS will have a different list of groups that the applicant will need to contact with regard to Section 106 historic preservation analyses, and the problem is exacerbated because those lists are provided months apart. In addition, members expressed frustration that the different agencies' reviews occur sequentially rather than in parallel, thus further delaying the grant of the permits necessary to commence construction.

An additional issue raised by our members is the lack of coordination between the Federal government agencies and State agencies that also handle permitting and ROW. As one member explained, historically service providers worked under the understanding that the placement of facilities within a state highway ROW required only a permit from the state department of transportation. This practice was standard and widely accepted, as the ROW is legally controlled and maintained by the state. Most state highway agencies permitted the facility without relaying to the applicant that they also needed to coordinate with the federal landowner that may have adjacent property. Despite the lack of notice, where federally-owned lands are adjacent to these state ROWs, federal agencies are requiring that service providers now go back and obtain separate permits for facilities that have already been placed—and are also requiring new permits for replacement or upgrade work—even though the facilities remain entirely within the state-controlled ROW. Requiring retroactive federal permitting for these facilities is both costly and time-consuming. There is no such dual-permitting requirement when a state highway ROW runs adjacent to private landowners. In those cases, the state's ROW authority is respected, and no additional private landowner permit or easement is required. The current policy creates a duplicative permitting process, causing service delays, increased deployment costs, and confusion over jurisdiction.

Our members also criticized the fact that there is a lack of consistency between how different BLM offices apply the agency's procedures and processes. For example, some BLM offices will allow for a categorical exclusion if a project meets certain requirements, while others will never or rarely allow for them. There have also been problems even getting consultation meetings set up with some offices for starting a permit application. Some offices of the BLM will not accept an SF299 application without first having a pre-application meeting. But then our members have found it impossible to schedule those meetings. Some members complained about the confusing and disparate treatment of the bond requirements for reclamation.[3] Finally, these

[3] *See*, https://www.blm.gov/policy/im-2019-013. A member is Alaska explained that this reclamation bond policy is inconsistently used and enforced. They have had several renewals and new applications that have been processed without this requirement, and one recent renewal request requiring it. The process was confusing, with little guidance and lack of (or no) bonding agents available within Alaska. Nor is it clear how the bond agent and the company should determine how much it would cost to reclaim the land if the line is abandoned. How do you estimate what the cost would be in 40 years for BLM to reclaim the land where fiber optic line was deployed by boring under the Matanuska River and buried deep within the adjacent

variations in policies and practices between different BLM offices are exacerbated by staffing and turnover issues, which have caused huge delays in even processing renewals of permits and ROWs. In sum, there is much room for improvement.

Suggestions for Improving the Permitting/ROW Processes and Policies

WTA and its members suggest there are several steps DOI could take that would accelerate the permitting and ROW processes without adversely affecting the environmental, historic or cultural interests that the DOI agencies' reviews are intended to protect. As an initial matter, DOI should update its systems so that electronic filing of the Form SF299 and any additional information requested/needed universally replaces the paper filings used today. The electronic filing system should also incorporate a "dashboard" so that the service providers and others could track the status of their applications.[4] In addition, electronic filing could also allow the DOI agencies to use Artificial Intelligence or other similar means to automate (and accelerate) the screening and review processes, which would save DOI resources and accelerate grants or permits and ROWs.[5] WTA also suggests that DOI design this electronic filing/monitoring system in such a manner that it could also be accessible to and useable by other State and Federal agencies, which would facilitate much better coordination amongst all other affected agencies both within and outside DOI. Finally, DOI should enter into memorandums of

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mudflats? The bond process also requires detailed corporate financial statements and documents, and the forms provided were geared towards small businesses and individuals, not utilities or linear footprints.

[4] An example of such a dashboard is the FAST 41 Program used by the Department of Transportation. (https://www.permits.performance.gov/projects/fast-41-covered). Use of such a dashboard would also allow the agencies to track their own compliance with the 270-day deadline for action on applications for permits and ROWs. *See*, n. 11, *infra.*

[5] *Cf., Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way*, 89 Fed Reg 25922 (April 12, 2024) at pp. 25927-28:

> Revisions to § 2804.12(a)(4) require an applicant to submit the project map for the project as Geographic Information Systems (GIS) shape files, or in an equivalent format, when requested to do so by the BLM. When a BLM office is conducting an analysis under the National Environmental Policy Act (NEPA) or the National Historic Preservation Act (NHPA), it is not uncommon for the various resource specialists to request that the applicant provide project data electronically in a GIS format to ensure that the correct area for the proposed project is analyzed. It is likely the individual or entity responsible for the application already has the proposed project data in a GIS format, and therefore, the BLM is not adding a significant burden upon the applicant. ***This new requirement is expected to reduce application processing times by allowing the BLM to integrate project locations into existing resource datasets and analyze the potential resource impacts more quickly.*** (emphasis added)

understanding or other agreements with all relevant Federal, State and Tribal entities to ensure that work on permits and ROWs is coordinated so as to minimize delays, redundancies or conflicts.

WTA also urges DOI to modify its regulations and procedures to minimize reviews in situations where there is little risk of adverse consequences. In this regard, the agencies should maximize use of tools like categorical exclusions as part of the environmental reviews, and the Advisory Council on Historic Preservation Program Comment for historic reviews.[6] Likewise, the agency reviews need not "reinvent the wheel" and require extensive reviews in situations where the risk of adverse effects is minimal. DOI should also ensure that the reviews of fiber optic communications projects take into account any low-impact construction methods the applicant might use, such as directional boring, which can eliminate most surface disturbances. Likewise, deployment of fiber optic cables in previously disturbed lands (such as the highway or county road ROWs) or existing utility corridors should be recognized as presenting little risk of harm. To the extent there is any concern with regard to even very low levels of risk, rather than delaying grant of the permit/ROW, the agencies could incorporate a condition in the permit/ROW that would require the service provider to halt construction in the nearby vicinity in the unlikely event that the service provider discovers historic artifacts or endangered plants or species while deploying the fiber optic networks.

The BLM recently updated its rules to help expedite the permitting processes for "Communications Uses."[7] As they recognized in that rulemaking proceeding:

> In the 21st century, broadband is just as vital to the public as roads and bridges, electric lines, and sewer systems. At the community level, an advanced telecommunications network is critical for supporting growth, allowing small businesses to flourish, creating jobs, strengthening the First-responder network in remote areas, and making it possible to remain competitive in the information-age economy. At the individual level, access to broadband—and the expertise to use it—opens the door to employment opportunities, educational resources, health care information, government services, and social networks.
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> Although there have been great strides in expanding broadband services in the United States over the past several years, rural and Tribal areas lag behind in broadband deployment. Successive Presidential administrations and Congress

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[6] https://www.achp.gov/sites/default/files/program_comments/2024-04/Communications%20Project%20PC%20amendment%20-%2020240313%20letterhead_SIGNED.pdf.

[7] See, generally, 43 C.F.R. Part 2860; *Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way*, 89 Fed Reg 25922 (April 12, 2024).

> have made it a priority to bring affordable, reliable, high-speed broadband to every American, including the more than 35 percent of rural Americans who lack access to broadband at minimally acceptable speeds. E.O. 13821, issued on January 8, 2018 [by President Trump], promotes better access to broadband internet service in rural America. It states that "Americans need access to reliable, affordable broadband internet service to succeed in today's information-driven, global economy" and establishes a policy "to use all viable tools to accelerate the deployment and adoption of affordable, reliable, modern high-speed broadband connectivity in rural America, including rural homes, farms, small businesses, manufacturing, and production sites, tribal communities, transportation systems, and healthcare and education facilities."[8]

While the rules adopted in that proceeding are intended to help accelerate the permitting and ROW grants, our members are still seeing needless delays and overly burdensome processes. The positive sentiments towards accelerating broadband deployment expressed in that rulemaking must also be transformed into concrete, affirmative results.

WTA thus urges DOI to make clear that the rules with regard to accelerating permits and beneficial pricing for linear right-of-way grants (43 C.F.R. §2866.23) apply to all fiber optic projects, not just wireless facilities and ancillary deployments.[9] WTA is also concerned that if elements of that process -- such as the 270-day limit for action on an application[10] -- are merely "aspirational goals," then those rules will not eliminate the delays that WTA's member continue to experience.[11] Therefore, WTA suggests that

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[8] *Ibid.* at pp. 25922-23.

[9] Compare the definitions of "communications site" and "communications uses" in 43 C.F.R. §2861.5.

[10] 43 C.F.R. §2864.25.

[11] According to an April 2024 GAO Report (GAO-24-106157, available at https://www.gao.gov/assets/gao-24-106157.pdf):

> The Bureau of Land Management (BLM) and Forest Service process the most applications from telecommunications providers to install communications use equipment or facilities—including for broadband internet—on federal property. However, GAO found that from fiscal years 2018 through 2022, BLM and Forest Service did not have sufficiently reliable—i.e., accurate and complete data—to determine the processing time for 42 percent and 7 percent, respectively, of their communications use applications. These agencies lacked the necessary controls to ensure staff entered key information, such as start and end dates, in their electronic systems. Without accurate, complete data to determine processing times, the agencies cannot track the extent to which they are complying with the statutory requirement that they grant or deny applications within 270 days.

DOI implement for its agencies a "shot clock" like the FCC uses where the application is "deemed granted" if the local government does not act on particular types of wireless siting applications within the specified timeframe (which varies from 60 to 150 days depending on the scope of the deployment).[12] Alternatively, DOI could modify the permit and ROW processing rules for communications uses to incorporate a presumption in favor of grant of an application within 270 days, with the burden shifted to the agency to show that there is a likelihood of harm or that grant of the application would disserve the public interest in order to deny the application. And as mentioned above, the agencies could incorporate a condition in the permit/ROW that would require the service provider to halt construction in the nearby vicinity in the unlikely event that the service provider discovers historic artifacts or endangered plants or species while deploying the fiber optic networks.

Taken together, these steps suggested by WTA to expedite reviews and lessen the burdens on service providers and the DOI agencies will well serve the public interest.

Respectfully submitted,

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For those communications use applications with sufficient data, BLM and Forest Service reduced their average processing time by 57 percent from fiscal years 2018 through 2022. However, despite this overall improvement, about half of the applications either exceeded the 270-day deadline or did not have sufficiently accurate and complete information to determine if they met the deadline.

[12] 47 C.F.R. 1.6100(c)(2)-(4); See also, *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(b) to Ensure Timely Siting Review & to Preempt Under Section 253 State & Local Ordinances That Classify All Wireless Siting Proposals As Requiring A Variance*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Rcd 13994 (2009), upheld in *City of Arlington, Texas v. FCC*, 569 U.S. 290 (2013); *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 29 FCC Rcd 12865 (2014).