

**Statement of  
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**House Committee on Natural Resources  
Subcommittee on Federal Lands**

***H.R. 4141, To provide that certain communications projects are not subject to certain environmental and historical preservation reviews, and for other purposes***

**June 22, 2023**

Thank you for the opportunity to testify on H.R. 4141, a bill “to provide that certain communications projects are not subject to certain environmental or historical preservation reviews, and for other purposes.” Specifically, the bill would exempt eligible communications projects from National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) review. The bill would also limit the timeframe for Tribes to respond and disclose Tribal interests in communication projects to 45 days.

The Department of the Interior (Department) supports the goals of the bill to expand access to electronic communications, including across Federal lands. We believe that Federal lands provide a tremendous opportunity to provide the public with access to wireless services through the permitting of communication facilities. However, the Department cannot support the bill as drafted, as it would limit crucial public engagement, limit the ability of Tribes to engage in the process, and prohibit the critical project-specific analysis provided under NEPA and NHPA for a potentially broad set of circumstances. We look forward to working with the Sponsor and Subcommittee on modifications to the bill.

**Background**

The Department manages nearly one fifth of the surface acreage in the United States, much of which encompasses rural areas, and therefore can play an important role in permitting communication and broadband infrastructure.

In 1976, with the passage of the Federal Land Policy and Management Act (FLPMA), Congress directed the BLM to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. Under FLPMA’s multiple use and sustained yield mandate, the BLM manages public lands for a broad range of uses, such as renewable and conventional energy development, livestock grazing, timber production, hunting and fishing, recreation, and conservation – including protecting cultural and historic resources. In addition, BLM-managed public lands provide vital habitat for more than 3,000 species of wildlife and support fisheries of exceptional regional and national value.

### ***Rights-of-Way***

Federal lands managed by the Department are crucial to facilitating the deployment of wired and wireless broadband communications infrastructure. These lands currently support a wide range of communication facilities and related technologies (e.g., radio, television, cellular, and microwave) on public lands through right-of-way (ROW) grants.

A ROW is an authorization to use a specific piece of public lands for a certain project. FLPMA ROWs are issued for a variety of uses, including electrical power generation, transmission and distribution systems, communications towers, highways, railroads, pipelines (other than oil and gas pipelines), and other facilities or systems that are in the public interest. Each year, the BLM processes thousands of applications for ROWs on public lands. The BLM currently administers over 4,200 facilities authorized by communication use ROWs on approximately 1,500 multi-facility communications sites.

Furthermore, as the largest Federal land manager in the West, the BLM plays a key role in planning for siting communication facilities and broadband development. The BLM authorizes and administers ROWs and leases for individual communication uses and develops and maintains communications site management plans to proactively support orderly deployment of new or additional communication uses.

### **H.R. 4141**

H.R. 4141 would exempt certain communications projects and Federal ROWs and other easements for communications facilities from NEPA and NHPA review. The exemption would apply if a ROW or other easement had previously been granted for a communications facility or utility facility for the same Federal building or property, or if the ROW or other easement is for a communication facility in a public ROW. The bill would also amend the Middle-Class Tax Relief and Jobs Creation Act of 2012 to exempt any modification of an existing communication site ROW from NEPA or NHPA reviews. This would exempt agencies from needing to complete NEPA or NHPA review when approving the collocation of new transmission equipment, removal of transmission equipment from an existing facility, or replacement of existing transmission equipment.

The bill also includes certain Tribal provisions in Section 3. It would establish a presumption that, if a Tribe receives a complete FCC form 620, then the Tribe has the necessary information to ascertain whether historic properties of religious or cultural significance to the Tribe may be affected by project. The Tribe then would have up to 45 days to respond and disclose any Tribal interests in the communications project.

### ***Analysis***

The Department cannot support the bill as written because it limits the ability of agencies to provide for appropriate environmental review and public involvement in a potentially broad set of circumstances. Environmental review and public involvement are critical components of the Department's responsibilities in managing federal lands. Environmental review can include the use of categorical exclusions, as appropriate. Even when the Department uses a categorical exclusion, however, it must still consider whether extraordinary circumstances exist in which a

normally excluded action may have a significant effect. This provides the Department an opportunity to consider the particular circumstances of a given proposal.

Further, we note that new information gained during the NEPA process, including public engagement activities where appropriate, routinely prevents delays in later stages of the project review process by ensuring agency decisions are robust and able to withstand judicial and other scrutiny.

Finally, the Department cannot support the provisions in the bill that would restrict Tribal consultation by removing NHPA review requirements and severely limiting a Tribe's ability to fully identify and evaluate historical or cultural resources affected by a communications project. The timeframe in the bill is inconsistent with Executive Order 13175 on Tribal consultation, which requires a 30-day notice and a 30-day post-consultation period. The Department recommends amending the bill to allow Tribes adequate time to review projects potentially affecting Tribal interests.

### **Conclusion**

The Department shares the goal of expanding communication networks, particularly for broadband internet in underserved and rural communities, and would appreciate the opportunity to work with the Sponsor on modifications that would help achieve these goals while maintaining the integrity of the NEPA and NHPA processes to conduct environmental, cultural, and historical reviews. Thank you again for the opportunity to provide testimony on H.R. 4141.