



November 25, 2019

**VIA E-MAIL**

Director, Lands Staff  
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**Re: CTIA Comments, *Land Uses; Special Uses; Streamlining Processing of Communications Use Applications, Proposed Rule, RIN 0596-AD38***

Dear Director:

CTIA<sup>1</sup> appreciates the work undertaken by the Forest Service (“FS”) and other federal land managing agencies in recent years to identify efficiencies to facilitate the siting of infrastructure on federal lands and properties. In furtherance of those efforts, CTIA urges the FS to adopt proposals in the *Notice* for evaluating applications to site communications facilities on National Forest System (“NFS”) lands<sup>2</sup> and those in a related proceeding, enhanced as described below, to help ensure that infrastructure needed to support wireless connectivity can be rapidly deployed while also managing and conserving natural resources on NFS lands.

America’s wireless industry has invested hundreds of billions of dollars to build state-of-the-art networks since 4G networks were launched in 2010. To meet the demand for everything wireless, providers are enhancing today’s 4G networks and rolling out 5G mobile broadband. 5G will be faster, more responsive, and able to connect more devices—unlocking innovation and investment and transforming every sector of our economy. But to make these next-generation networks a reality, providers must upgrade, deploy, and densify network configurations nationwide, including on federally owned and managed lands, which comprise

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<sup>1</sup> CTIA – The Wireless Association® (“CTIA”) ([www.ctia.org](http://www.ctia.org)) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers and suppliers, as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, DC.

<sup>2</sup> See *Land Uses; Special Uses; Streamlining Processing of Communications Use Applications, Proposed Rule*, 84 Fed. Reg. 50703 (Sept. 25, 2019) (“*Notice*”).



nearly 30 percent of the land in the U.S.<sup>3</sup> FS can support these efforts, particularly in rural areas where many NFS lands are located, by modernizing the agency’s siting processes. As the President has recognized, federal agencies should “use all viable tools to accelerate the deployment and adoption of affordable, reliable, modern high-speed broadband connectivity to rural America.”<sup>4</sup>

Accordingly, CTIA commends the FS for advancing proposals in the *Notice* to streamline and improve the process for siting communications facilities on NFS properties. As stated by the Agriculture and Rural Prosperity Task Force, “far too many government policies stifle network buildout. By streamlining the deployment process, allowing access to existing infrastructure, and reducing barriers to buildout, risk can be reduced and providers can be encouraged to expand networks throughout rural America.”<sup>5</sup> Importantly, the *Notice* builds on additional proposals made earlier this year to streamline evaluation of communications use applications by updating the agency’s rules implementing the National Environmental Policy Act (“NEPA”).<sup>6</sup> Those proposed rule revisions would expand the use of categorical exclusions (“CEs”) and fully meet NEPA’s requirements.<sup>7</sup> CTIA supports proposals contained in both items, which are important steps that will help facilitate the rapid and efficient deployment of wireless infrastructure on NFS lands while allowing the agency to continue to manage and conserve NFS natural resources.

## **I. THE FS SHOULD ADOPT ITS PROPOSALS TO STREAMLINE THE EVALUATION OF APPLICATIONS TO SITE COMMUNICATIONS FACILITIES ON NFS LANDS.**

CTIA supports FS proposals to implement statutory directives to establish procedures for streamlining the agency’s evaluation of applications to site communications facilities on NFS

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<sup>3</sup> See American Broadband Initiative Milestones Report, at 11 (Feb. 2019), [https://www.usda.gov/sites/default/files/documents/American%20Broadband%20Initiative%20Milestones%20Report\\_Feb\\_2019.pdf](https://www.usda.gov/sites/default/files/documents/American%20Broadband%20Initiative%20Milestones%20Report_Feb_2019.pdf) (“American Broadband Initiative Milestones Report”).

<sup>4</sup> Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America, E.O. 13821 (Jan. 8, 2018), <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-streamlining-expediting-requests-locate-broadband-facilities-rural-america/>.

<sup>5</sup> See Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity, United States Department of Agriculture (Oct. 21, 2017), <https://www.usda.gov/sites/default/files/documents/rural-prosperity-report.pdf>.

<sup>6</sup> See *National Environmental Policy Act (NEPA) Compliance*, Proposed Rule, 84 Fed. Reg. 27544 (Jun. 13, 2019) (“NEPA Notice”).

<sup>7</sup> See *id.* at 27546-49.



lands. These statutory directives include Section 8705 of the Agriculture Improvement Act of 2018 (“Farm Bill”)<sup>8</sup> and Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, as amended by the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (“MOBILE NOW Act”).<sup>9</sup> As discussed below, the agency can help implement these statutory requirements by (1) incorporating a 270-day shot clock to act on applications for communications uses into its rules; (2) putting in place a robust and transparent system to track applications for communications uses; and (3) establishing a 30-year term for communications use authorizations with automatic renewals at recurring 10-year intervals.

**270-Day Shot Clock to Act on Applications for Communications Uses.** The FS should reinforce its existing directives implementing Section 8705 of the Farm Bill and the MOBILE NOW Act by incorporating into its rules the requirement for the agency to grant or deny an application for a communications use within 270 days of receipt and to notify the applicant in writing of the grant or denial. To implement these requirements, the FS proposes to add a new subparagraph to Section 251.54(g)(4) of the agency’s rules, which governs evaluation of special use applications.<sup>10</sup> The subparagraph would specify that within 270 days of receipt of an application for a new or modified communications facility or collocation, the authorized FS officer “shall grant or deny the application and notify the applicant in writing of the grant or denial.”<sup>11</sup>

The FS should adopt the rule changes as proposed. The statutory 270-day shot clock is a critical tool to address lengthy application review times. Without a shot clock and the requirement to act, applications may languish indefinitely. Indeed, as recognized in the American Broadband Initiative Milestones Report—which was co-chaired by Secretary of Agriculture Sonny Perdue—it takes on average nearly a year to complete the process for authorizing requests for

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<sup>8</sup> See Agriculture Improvement Act of 2018, Pub. L. No. 115-334, Title VIII, Subtitle G § 8705, 132 Stat. 4490, 4878-80 (2018) (“Farm Bill”) (requiring, among other things, that FS issue regulations that streamline the process for evaluating applications to locate or modify communications facilities on NFS lands).

<sup>9</sup> See Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, Division P, Title VI § 606(a), 132 Stat. 348, 1101-04 (2018) (“MOBILE NOW Act”); 47 U.S.C. § 1455(b)(3)(A) (requiring, among other things, FS to grant or deny an application for a communications facility within 270 days of receipt, and to notify the applicant of the grant or denial).

<sup>10</sup> See *Notice*, 84 Fed. Reg. at 50704.

<sup>11</sup> 36 C.F.R. § 251.54(g)(4)(ii) (proposed).



communications uses on federal lands,<sup>12</sup> and wireless providers have reported years-long delays in siting approvals, including for simple lease renewals.<sup>13</sup> As the FCC’s Broadband Deployment Advisory Committee (“BDAC”) report on streamlining federal siting found, such delays are “contrary to the national policy promoting broadband throughout all federal properties.”<sup>14</sup>

**Robust System to Track Applications for Communications Uses.** The FS should reinforce existing regulatory requirements implementing Section 8705 of the Farm Bill by establishing a process in the agency’s directive system for tracking applications for communications uses. The FS proposes to add a second subparagraph to Section 251.54(g)(4) to indicate that the agency shall establish a process in its directive system to track applications for communications uses that provides for: (i) identifying the number of applications received, approved, and denied; (ii) describing the reasons any applications are denied, if applicable; and (iii) describing the amount of time between receipt and grant or denial of the application.<sup>15</sup> The FS also proposes to revise its directives at FSH 2709.11, Chapter 90, to define elements of the tracking system for communications use applications.<sup>16</sup> The proposed tracking system would: (i) establish responsibility for the tracking system;<sup>17</sup> (ii) provide for a 30-day review period by communications use authorization holders of new or modified communications site management plans;<sup>18</sup> (iii) implement procedures that would expedite requests to collocate communications uses in or on existing communications facilities;<sup>19</sup> and (iv) establish

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<sup>12</sup> American Broadband Initiative Milestones Report at 15.

<sup>13</sup> See, e.g., Testimony of Brad Gillen, Executive Vice President, CTIA, Before the U.S. Senate Committee on Commerce, Science, and Transportation Subcommittee on Communications, Technology, Innovation, and the Internet, at 7-8 (Mar. 13, 2018), <https://www.commerce.senate.gov/services/files/85088BE2-0080-4927-BEC0-41B28D5E0097>.

<sup>14</sup> FCC Broadband Deployment Advisory Committee, Streamlining Federal Siting Working Group, Final Report, at 6 (Jan. 2018) (“BDAC Federal Siting Report”), <https://www.fcc.gov/sites/default/files/bdac-federalsiting-01232018.pdf>.

<sup>15</sup> See Notice, 84 Fed. Reg. at 50704; see also 36 C.F.R. § 251.54(g)(4)(iii) (proposed).

<sup>16</sup> See Notice, 84 Fed. Reg. at 50704 (citing Forest Service, Special Uses Handbook, FSH 2709.11, Chpt. 90 (Aug. 2018) (“FSH 2709.11”), [https://www.fs.fed.us/im/directives/fsh/2709.11/wo\\_2709.11\\_90\\_Amend-2018-1.doc](https://www.fs.fed.us/im/directives/fsh/2709.11/wo_2709.11_90_Amend-2018-1.doc)).

<sup>17</sup> See FSH 2709.11, § 90.4 (proposed).

<sup>18</sup> See *id.* § 92 (proposed).

<sup>19</sup> See *id.* § 94.1 (proposed).



procedures for inputting data needed to track communications use applications.<sup>20</sup>

CTIA supports these proposed changes to the agency’s rules and directives, but stresses the need to ensure that the tracking system is transparent to applicants. In particular, the agency should provide an online mechanism for applicants to track the progress of individual applications without having to consume staff resources by calling the agency for a status update. An online application tracking mechanism will allow the agency and applicants to efficiently track the progress and status of an application request. As the BDAC Federal Siting Report found: “This will facilitate efficient handling and processing of applications. This mechanism can also help applications stay on track to meet required timelines and serve as a useful tool to communicate about application progress and status.”<sup>21</sup>

**30-Year Term for Communications Use Authorizations Followed by Automatic Recurring 10-Year Renewals.** The FS should further implement Section 8705 of the Farm Bill by establishing a 30-year term for communications use authorizations. While Section 8705 requires the agency to issue regulations that include a minimum term of 15 years for communications use authorizations,<sup>22</sup> CTIA strongly supports the 30-year term proposed by the FS because it will better incentivize investment.<sup>23</sup> CTIA also recommends that the FS add automatic recurring 10-year renewals following the initial 30-year term.

The BDAC Federal Siting Report recommended a 30-year term with a renewal expectancy to incentivize investment, concluding that, “to minimize the cost – on both the agency and the provider – of future siting applications, and given the extensive capital investment of long-lived assets required for the installation of wireline and wireless infrastructure, *it is in the public interest for applications to lead to leases or easements with terms at least 30 years long, or consistent with typical commercial lease terms for similar broadband facilities, and with renewal expectancy.*”<sup>24</sup> As FCC Chairman Ajit Pai has previously explained, “federal agencies should issue longer-term leases or easements with renewal expectancies, so that providers

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<sup>20</sup> See *id.* § 94.3 (proposed).

<sup>21</sup> BDAC Federal Siting Report at 9, 16.

<sup>22</sup> See Farm Bill § 8705(c)(2), 132 Stat. 8479.

<sup>23</sup> See *Notice*, 84 Fed. Reg. at 50704; 36 C.F.R. § 251.54(g)(5)(ii) (proposed).

<sup>24</sup> BDAC Federal Siting Report at 15 (emphasis added).



have the certainty necessary to deploy on federal lands.”<sup>25</sup>

## **II. THE FS ALSO SHOULD ADOPT ITS PROPOSED REVISIONS TO THE AGENCY’S NEPA RULES TO FACILITATE RELIANCE ON CATEGORICAL EXCLUSIONS.**

The *Notice* references a related streamlining proposal, focused on revising the agency’s NEPA rules to facilitate increased reliance on CEs.<sup>26</sup> That proposal is part of a larger effort by the Administration, Congress, and federal agencies to remove barriers to the deployment of communications projects on federal lands.

The Department of Agriculture has correctly stated that increasing the efficiency of its environmental analyses will free up agency resources to increase the health and productivity of national forests and be more responsive to requests for services.<sup>27</sup> It’s worth noting as well that it will also help expand and improve communications services used by forest land managers. For example, land managers are increasingly relying on wireless networks as a primary communications tool, as well as a platform on which to run sensors and Internet of Things devices to enhance land and resource management, measure species populations, conduct species assessments, and enforce agency rules and regulations. Wireless networks are also critical for first responders, including those who battle forest fires and provide medical support for forest employees and visitors. Streamlining the agency’s NEPA rules will help to accelerate these benefits.

Progress has been made on these streamlining efforts, with the 2017 adoption of the Program Comment for Communications Projects on Federal Lands and Property, designed to accelerate the review of communications projects, particularly broadband deployment, under Section 106 of the National Historic Preservation Act.<sup>28</sup> The Program Comment applies to communications deployments that are permitted or funded by a number of federal agencies, including the FS.<sup>29</sup>

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<sup>25</sup> Ajit Pai, FCC Commissioner, Remarks at the CTIA Wireless Foundation Smart Cities Expo, Washington, D.C., at 3 (Nov. 2, 2016), <https://docs.fcc.gov/public/attachments/DOC-342032A1.pdf>.

<sup>26</sup> See *Notice*, 84 Fed. Reg. at 50704 (citing *NEPA Notice*).

<sup>27</sup> See *NEPA Notice*, 84 Fed. Reg. at 27544.

<sup>28</sup> See Advisory Council on Historic Preservation, *Notice of Issuance of Program Comment for Communications Projects on Federal Lands and Property*, 82 Fed. Reg. 23818 (May 24, 2017) (“Program Comment”).

<sup>29</sup> See *id.* at 23823 (“This Program Comment applies to communication deployment undertakings that are carried out, permitted, licensed, funded, or assisted by ... [t]he U.S. Department of Agriculture’s (USDA) U.S. Forest Service (USFS) ...”).



The proposed NEPA rule revisions will further increase the efficiency of the FS's environmental analysis while satisfying the agency's NEPA obligations. CTIA supports the following CEs in particular, which will further streamline the evaluation of communications use applications:

- *Projects under 20 acres.* This proposed revision of the agency's rules would expand the current CE for special use authorizations at Section 220.5(e)(3) from five to 20 acres and would cover placement of additional communications facilities like towers and generators.<sup>30</sup>
- *Existing FS administrative sites.* This proposed new CE would cover the construction or reconstruction of communications infrastructure at an existing FS administrative site (e.g., a site used for purposes of administration of FS activities).<sup>31</sup>
- *Use of other agency procedures.* This proposed new CE would allow the FS to use a CE of another federal agency for an action that will be implemented jointly with that other agency, as long as the FS obtains the written concurrence from the other agency that the CE applies.<sup>32</sup>
- *Renewals.* This proposed new CE would reduce the backlog of expired and expiring special use authorizations by eliminating the need for a project or case file and decision memo when reissuing an authorization.<sup>33</sup>

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CTIA recommends that the FS adopt the rules and policy directives as discussed above. Importantly, these actions will fully protect the agency's mission to manage and conserve natural resources on NFS lands, while at the same time helping to expedite the responsible deployment of wireless infrastructure on those lands to meet the rapidly growing demand for high-quality wireless broadband.

Respectfully Submitted,

/s/ Kara Graves

Kara Graves  
Director, Regulatory Affairs

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<sup>30</sup> See *NEPA Notice*, 84 Fed. Reg. at 27547-48; 36 C.F.R. § 220.5(e)(3) (proposed).

<sup>31</sup> See *NEPA Notice*, 84 Fed. Reg. at 27548; 36 C.F.R. § 220.5(e)(21) (proposed).

<sup>32</sup> See *NEPA Notice*, 84 Fed. Reg. at 27549; 36 C.F.R. § 220.5(e)(27) (proposed).

<sup>33</sup> See *NEPA Notice*, 84 Fed. Reg. at 27547; 36 C.F.R. § 220.5(d)(11) (proposed).