

**Before the  
US. Department of Agriculture, Forest Service  
Washington, D.C. 20250**

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

**COMMENTS  
OF  
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association<sup>1</sup> hereby submits these comments in response to the Notice and Request for Comment<sup>2</sup> published in the Federal Register by the United States Department of Agriculture’s Forest Service (“Forest Service”) on December 22, 2021 in the above-captioned proceeding. The *Notice* seeks comment on establishing an “annual programmatic administrative fee”<sup>3</sup> (“programmatic administrative fee” or “fee”) for access to Forest Service land for the purposes of placement of communications facilities. This fee is proposed as one that will “provide the funds necessary to support a more modernized, efficient, and enhanced communications use program.”<sup>4</sup> Specifically, it is cited by the *Notice* as necessary to hire additional staff to more efficiently process communications service providers’ applications for access to Forest Service land, thereby expediting broadband deployment.<sup>5</sup> This

---

<sup>1</sup> NTCA–The Rural Broadband Association represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

<sup>2</sup> Request for Comment Land Uses; Special Uses; Annual Programmatic Administrative Fee for Communications Use Authorizations RIN 0596-AD44 (86 FR 72540, Dec. 22, 2021) (“*Notice*”).

<sup>3</sup> *Id.*, p. 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

specific fee would be assessed on top of those already assessed as “land-use” fees on communications service providers placing facilities on the agency’s lands.

NTCA supports any efforts that the Forest Service, and indeed any federal agency, can take to expedite the process by which communications service providers are given permits to install facilities on federal lands. However, to the extent the fee as proposed by the *Notice* is adopted – one that would be assessed on top of those already assessed as “land-use” fees on communications service providers placing facilities on federal lands – several conditions are warranted. First, the *Notice*’s proposed programmatic administrative fee for access to Forest Service lands should be tied directly to the actual, documented costs incurred in deploying staff and other resources to issue final construction permits. Second, this fee must be used *exclusively and entirely* for the purposes as articulated in the *Notice* – that is, to hire and train the specific and additional staff necessary to process permit applications rather than having this fee set at a level that recovers costs of other activities or is diverted for any other purposes. Third, NTCA proposes that the Forest Service adopt performance measures by which the public and policymakers can judge whether the newly obtained resources are in fact delivering the more efficient permitting process that has been promised and is now being paid for.

**I. A MORE EFFICIENT PROCESS FOR OBTAINING ACCESS TO FEDERAL LANDS WOULD SPEED THE DEPLOYMENT AND UPGRADING OF RURAL NETWORKS.**

**A. The process of obtaining access to federal lands has long been an expensive and time-consuming barrier to broadband deployment for rural providers operating in already challenging to serve areas of the nation.**

As background, NTCA’s members operate in some of the nation’s most difficult, challenging-to-operate-in, and costly-to-serve rural areas of the nation. These are smaller

operators, averaging fewer than 5,000 residential and business subscribers<sup>6</sup> and doing so with approximately 25 to 30 total staff, and yet they serve some of the most remote and sparsely-populated areas of this nation. Rural operators often confront difficult terrain (such as mountains, rivers, lakes, forested areas or rocky terrain), shortened construction seasons due to frozen ground, and recently, labor shortages of trained technicians and supply chain issues that limit access to (and drive up the price of) everything from fiber to consumer premises equipment. Any extra costs or delays must be avoided to make it possible to undertake and complete a network construction project, given that the higher costs of deployment and operating in these areas must be recovered entirely from small rural customer bases in the absence of some support from federal or state resources.

Obtaining access to federal lands for the purposes of broadband facilities installation typically tops the list of NTCA member concerns when it comes to broadband deployment, especially in certain parts of the country. Members recount delays of up to a year in obtaining necessary permissions for construction of such infrastructure. Environmental and historic preservation processes can be long and arduous, and even if a project only touches federal lands for a very short distance as part of a larger deployment of fiber, for example, the entire project can be delayed by the time-consuming process of obtaining a permit for areas under an agency's purview. These rural operators often have no choice but to, for example, install fiber under a road touching Bureau of Land Management or Forest Service Land, as re-rerouting even that small portion of the project is either impossible due to the substantial distances involved, impassible terrain, or the inability to obtain easements on adjacent privately held land (if any).

---

<sup>6</sup> Broadband/Internet Availability Survey Report, NTCA–The Rural Broadband Association, Dec. 2021, p. 1, available at: <https://www.ntca.org/sites/default/files/documents/2021-12/2021-broadband-survey-report-final-12-15-21.pdf>.

In 2017, NTCA’s Chief Executive Officer participated in the Federal Communications Commission’s Broadband Deployment Advisory Committee (“BDAC”) “Streamlining Federal Siting” Working Group.<sup>7</sup> This group of stakeholders from a variety of interests – ranging from industry officials to representatives of federal and state governments and tribes – confirmed that this barrier is one often faced by providers of all sizes and technologies. One common theme that emerged in the group’s deliberations was a lack of staff resources necessary to process applications; NTCA members confirm this, reporting that they are often told that the main barrier to the issuance of final permits is the lack of agency staff to review them. Even worse, land use fees already collected by these agencies are not permitted to be utilized to hire more staff to relieve the overwhelmed few processing applications.<sup>8</sup> In fact, the BDAC working group specifically stated that, “[b]ecause many federal agencies express that staff constraints are a cause of delay in reviewing siting applications, the Working Group recommends that all federal agencies should retain more of the fees they collect from broadband deployment.”<sup>9</sup> Should the Forest Service move forward consistent with the recommendations below, it could help break this long-standing log-jam that threatens to delay national broadband deployment goals.<sup>10</sup>

---

<sup>7</sup> Broadband Deployment Advisory Committee, “Streamlining Federal Siting” Working Group, Final Report, (Jan. 24, 2018) (“*BDAC Federal Siting Report*”), available at: <https://www.fcc.gov/sites/default/files/bdac-federal-siting-report-012018-2.pdf>.

<sup>8</sup> *Notice*, p. 2.

<sup>9</sup> *BDAC Federal Siting Report*, p. 5.

<sup>10</sup> Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021), § 60101, §§ 60102(e)(3)(A)(i)(I), 60102(f), and 60104.

**B. The proposed programmatic administrative fee for access to federal lands should support, directly and exclusively, the review of facilities siting permit applications and in no case should they be diverted for other purposes; the specific fee must also be directly tied to the costs incurred by agency staff.**

As noted above, NTCA supports the underlying purpose at issue here – additional resources that could expedite access to federal lands and can speed broadband deployment are welcome. Most importantly, the programmatic administrative fee that the *Notice* proposes to collect must be utilized specifically and only for the purposes of “administering the communications use program” and “streamlining and expediting requests to locate broadband facilities in rural America” and “consistent with the objectives E.O. 13821.”<sup>11</sup> As the *Notice* indicates, this Executive Order “encourages Federal agencies to reduce barriers to capital investments, remove obstacles to broadband services, and more efficiently employ Federal resources.”<sup>12</sup> NTCA can think of no better way to meet these three objectives than by utilization of the programmatic administrative fee specifically to hire and train staff to process these applications.

It is important however that the resources made available to the Forest Service via this fee are utilized *exclusively* for permitting review processes as espoused in the *Notice* and do not bleed over into or subsidize other agency efforts.<sup>13</sup> NTCA members, like any communications service providers, already incur land-use fees for access to Forest Service land. These, of course, come on top of the many other costs these operators assume as part of broadband network

---

<sup>11</sup> *Notice*, p. 1.

<sup>12</sup> *Id.*

<sup>13</sup> Of course, NTCA recognizes that staff hired may at times work on other projects and that the staff hired with this fee may work on other projects. However the fee *amount* should not support work on such other projects – rather, the fee amount assessed on broadband providers should be tied to the time involved and specific costs of reviewing this category of applicants’ permit requests.

deployment. If the fee at issue herein is to be layered upon these land use fees and will be *for the specific purpose consistent with the Executive Order*, as referenced above and cited in the *Notice*, but are then in any way diverted for other purposes, the programmatic administrative fee will be legally unsustainable. Nothing in the Executive Order that forms the basis of the *Notice* proposal indicates any intent to enable any agency to adopt an additional fee that *supplements existing* land-use fees already assessed. Rather, the fee here is intended for the specific administrative purpose to review applications for access to agency land. Diverting these fees or adding to the agency’s “general funds” would run counter to the stated intent of expediting access to federal lands for broadband deployment. NTCA members can confirm what the *Notice* itself acknowledges – that the land use fees already incurred for access to Forest Service land do not directly support the permitting review process, and as noted above, that additional staff resources are necessary to process the permits at issue herein. Any fee diversions will only exacerbate existing circumstances and defeat the purpose the *Notice* purports to advance.

In addition, it is critical that the costs that the Forest Service incurs with respect to administering permits, which will in turn form the basis of the programmatic administrative fee at issue here, are directly tied to the fee amount. However, even as some estimated costs are included in the *Notice*,<sup>14</sup> that document states as well that the Forest Service “will include in the rulemaking record *documentation* of the estimated costs upon which the \$1,400 and \$400 annual programmatic administrative fees are based.”<sup>15</sup> It would seem the agency is putting the imposition-of-the-fee cart before the-estimated-costs horse – that is, documentation of the full and specific details of these estimated costs should be publicly available for scrutiny *prior to* the

---

<sup>14</sup> *Notice*, p. 6.

<sup>15</sup> *Id.*, p. 5 (emphasis added).

imposition of the fee (and indeed even before the amount is set). Indeed, such data should have been included in the *Notice*. Such transparency will give providers and the public (many of whom are in need of access to broadband service and thus would benefit directly from any efforts to expedite that) confidence that the programmatic administrative fee is in fact related to the costs incurred by the agency and will be used for that purpose and no other.

In addition, this transparency is critical so that the “cost recovery” here not operate as some sort of “blank check” under which costs of all kinds and unrelated to reviewing siting applications are continually included in the basis of the fee, thereby causing it to rise year-over-year. And, even as the Forest Service is likely to have peaks and valleys in terms of permitting applications, the fee should not continually increase based on a vague assertion of “costs have increased.” Thus, the costs that form the basis of the fee should be reasonable, tied to performance of the specific tasks directly related to processing siting applications, with documentation by the agency that it has factored in the inevitable work flow that will vary.

- C. Performance metrics by which the efficiency of permitting timelines can be judged should be developed; annual reporting of compliance with such metrics and the ability of those operators assessed the programmatic administrative fee to rate the agency’s performance are important accountability provisions that should be adopted as well.**

As noted above, for NTCA members, any fees incurred in conjunction with the installation of network facilities must necessarily be recovered in substantial part or in whole from small rural customer bases. These operators (and indeed any other providers) should have confidence that fees assessed by any agency are put to good use – to instill such confidence and once again promote transparency, the efficacy of such reviews that would now be supported by these additional resources should be measured and the results made publicly available. As the *Notice* states, a “June 12, 2020 Secretarial Memorandum was issued to the Chief of the Forest

Service, which directs the Agency to focus resources on activities that support the productive use of NFS lands to deliver goods and services efficiently and effectively to meet the needs of the public.”<sup>16</sup> A baseline reflecting the efficiency of the process as it exists now (*i.e.*, prior to the deployment of additional staff resources this fee will make possible) should be compared to the process that emerges once these resources are available, thereby enabling the public and policymakers to determine if this directive is being met and the additional fee remains warranted.

Thus, as an initial matter, the Forest Service should adopt “performance metrics” by which the efficiency of permitting reviews can be judged. This could, for example, be based on the number of days between the *filing* of an application for access to Forest Service land and the issuance of a final permit. The agency could measure such performance for a period prior to the imposition of the fee as a “baseline” against which future performance will be judged once the fee is assessed and used by the Forest Service to obtain new staff. Other metrics may be appropriate as well based upon the agency’s own review of its processes.

Such performance metrics and the agency’s compliance with them should be posted on the Forest Service website at least annually, if not on shorter intervals, to track trends in application processing. Broadband subscribers will ultimately bear the burden of the programmatic administrative fee should it be adopted – they should be provided the opportunity to judge whether the Forest Service is leveraging its newly obtained resources in a way that directly advances the stated purpose.

Finally, the Forest Service should adopt a mechanism through which communication service providers subject to the proposed programmatic administrative fee can offer their own comments upon and assessment of the agency’s efficiency with respect to application processing

---

<sup>16</sup> *Id.*, p. 3.

times. Those incurring this fee and seeking access to Forest Service land – and assessed the fee for the specific purpose of improving the efficiency of the permitting process – are in the best position to offer insights into the agency’s compliance with the performance metrics proposed above. Many, if not most, NTCA members (and likely many other operators) have interacted with numerous federal agencies for the purposes of obtaining access to federal lands for network facilities siting, and they therefore have a substantial base of experience from which to assess whether process improvements are delivering as promised. This additional “good government” step can also allow the agency to improve its efficiency going forward based on provider experience, improving the efficiency of the process for all involved.

## II. CONCLUSION

For the reasons stated above, NTCA supports the proposed programmatic administrative fee subject to the Forest Service (1) documenting that the fee is tied directly to the actual, documented costs incurred in deploying new (2) agreeing that funds taken in will be used *exclusively and entirely* for the purposes as articulated in the *Notice*; and (3) adopting performance measures by which the public and policymakers can judge whether the newly obtained resources reduce barriers to broadband deployment on the agency’s land.

Respectfully submitted,

/s/ Michael R. Romano  
Michael Romano  
Brian Ford



4121 Wilson Boulevard, Suite 1000  
Arlington, VA 22203  
(703) 351-2000 (Tel)  
[mromano@ntca.org](mailto:mromano@ntca.org)

February 22, 2022