

118TH CONGRESS
1ST SESSION

H. R. 4141

To provide that certain communications projects are not subject to requirements to prepare certain environmental or historical preservation reviews, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2023

Mr. FULCHER introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide that certain communications projects are not subject to requirements to prepare certain environmental or historical preservation reviews, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. APPLICATION OF NEPA AND NHPA TO CERTAIN**
4 **COMMUNICATIONS PROJECTS.**

5 (a) IN GENERAL.—

6 (1) NEPA EXEMPTION.—A Federal authoriza-
7 tion with respect to a covered project may not be
8 considered a major Federal action under section

1 102(2)(C) of the National Environmental Policy Act
2 of 1969 (42 U.S.C. 4332(2)(C)).

3 (2) NATIONAL HISTORIC PRESERVATION ACT
4 EXEMPTION.—A covered project may not be consid-
5 ered an undertaking under section 300320 of title
6 54, United States Code.

7 (b) GRANT OF EASEMENT ON FEDERAL PROP-
8 ERTY.—

9 (1) NEPA EXEMPTION.—A Federal authoriza-
10 tion with respect to a covered easement for a com-
11 munications facility may not be considered a major
12 Federal action under section 102(2)(C) of the Na-
13 tional Environmental Policy Act of 1969 (42 U.S.C.
14 4332(2)(C)), if—

15 (A) a covered easement has previously been
16 granted for another communications facility or
17 a utility facility with respect to the same build-
18 ing or other property owned by the Federal
19 Government; or

20 (B) the covered easement is for a commu-
21 nications facility in a public right-of-way.

22 (2) NATIONAL HISTORIC PRESERVATION ACT
23 EXEMPTION.—A covered easement for a communica-
24 tions facility may not be considered an undertaking

1 under section 300320 of title 54, United States
2 Code, if—

3 (A) a covered easement has previously been
4 granted for another communications facility or
5 a utility facility with respect to the same build-
6 ing or other property owned by the Federal
7 Government; or

8 (B) the covered easement is for a commu-
9 nications facility in a public right-of-way.

10 (c) REQUESTS FOR MODIFICATION OF CERTAIN EX-
11 ISTING WIRELESS FACILITIES.—Section 6409(a)(3) of the
12 Middle Class Tax Relief and Job Creation Act of 2012
13 (47 U.S.C. 1455(a)(3)) is amended to read as follows:

14 “(3) APPLICATION OF NEPA; NHPA.—

15 “(A) NEPA EXEMPTION.—A Federal au-
16 thorization with respect to an eligible facilities
17 request may not be considered a major Federal
18 action under section 102(2)(C) of the National
19 Environmental Policy Act of 1969 (42 U.S.C.
20 4332(2)(C)).

21 “(B) NATIONAL HISTORIC PRESERVATION
22 ACT EXEMPTION.—An eligible facilities request
23 may not be considered an undertaking under
24 section 300320 of title 54, United States Code.

“(C) FEDERAL AUTHORIZATION DEFINED.—In this paragraph, the term ‘Federal authorization’—

“(i) means any authorization required under Federal law with respect to an eligible facilities request; and

“(ii) includes any permits, special use authorizations, certifications, opinions, or other approvals as may be required under Federal law with respect to an eligible facilities request.”.

SEC. 2. PRESUMPTION WITH RESPECT TO CERTAIN COMPLETE FCC FORMS.

(a) PRESUMPTION.—If an Indian Tribe is shown to have received a complete FCC Form 620 or FCC Form 621 (or any successor form), or can be reasonably expected to have received a complete FCC Form 620 or FCC Form 621 (or any successor form), and has not acted on a request contained in such complete form by the date that is 45 days after the date of such receipt or reasonably expected receipt—

(1) the Commission and a court of competent jurisdiction (as the case may be) shall presume the applicant with respect to such complete form has made a good faith effort to provide the information

1 reasonably necessary for such Indian Tribe to ascer-
2 tain whether historic properties of religious or cul-
3 tural significance to such Indian Tribe may be af-
4 fected by the undertaking related to such complete
5 form; and

6 (2) such Indian Tribe shall be presumed to
7 have disclaimed interest in such undertaking.

8 (b) OVERCOMING PRESUMPTION.—

9 (1) IN GENERAL.—An Indian Tribe may over-
10 come a presumption under subsection (a) upon mak-
11 ing, to the Commission or a court of competent ju-
12 risdiction, a favorable demonstration with respect to
13 1 or more of the factors described in paragraph (2).

14 (2) FACTORS CONSIDERED.—In making a de-
15 termination regarding a presumption under sub-
16 section (a), the Commission or court of competent
17 jurisdiction shall give substantial weight to—

18 (A) whether the applicant with respect to
19 the relevant complete form failed to make a
20 reasonable attempt to follow up with the appli-
21 cable Indian Tribe not earlier than 30 days,
22 and not later than 50 days, after the applicant
23 submitted a complete FCC Form 620 or FCC
24 Form 621 (as the case may be) to such Indian
25 Tribe; and

1 (B) whether the rules of the Commission,
2 or FCC Form 620 or FCC Form 621, are
3 found to be in violation of a Nationwide Pro-
4 grammatic Agreement of the Commission.

5 **SEC. 3. RULE OF CONSTRUCTION.**

6 Nothing in this Act or any amendment made by this
7 Act may be construed to affect the obligation of the Com-
8 mission to evaluate radiofrequency exposure under the Na-
9 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
10 et seq.).

11 **SEC. 4. DEFINITIONS.**

12 In this Act:

13 (1) CHIEF EXECUTIVE.—The term “Chief Ex-
14 ecutive” means the person who is the Chief, Chair-
15 man, Governor, President, or similar executive offi-
16 cial of an Indian tribal government.

17 (2) COMMISSION.—The term “Commission”
18 means the Federal Communications Commission.

19 (3) COMMUNICATIONS FACILITY.—The term
20 “communications facility” has the meaning given the
21 term “communications facility installation” in sec-
22 tion 6409(d) of the Middle Class Tax Relief and Job
23 Creation Act of 2012 (47 U.S.C. 1455(d)).

24 (4) COVERED EASEMENT.—The term “covered
25 easement” means an easement, right-of-way, or lease

1 with respect to a building or other property owned
2 by the Federal Government, excluding Tribal land
3 held in trust by the Federal Government (unless the
4 Indian tribal government with respect to such land
5 requests that the Commission not exclude the land
6 for purposes of this definition), for the right to in-
7 stall, construct, modify, or maintain a communica-
8 tions facility or a utility facility.

9 (5) COVERED PROJECT.—The term “covered
10 project” means any of the following:

11 (A) A project—

12 (i) for—

13 (I) the mounting or installation
14 of a personal wireless service facility
15 with another personal wireless service
16 facility that exists at the time at
17 which a request for authorization of
18 such mounting or installation is sub-
19 mitted to a State or local government
20 or instrumentality thereof or to an In-
21 dian tribal government; or

22 (II) the modification of a per-
23 sonal wireless service facility; and

24 (ii) for which a permit, license, or ap-
25 proval from the Commission is required or

1 that is otherwise subject to the jurisdiction
2 of the Commission.

3 (B) A project—

4 (i) for the placement, construction, or
5 modification of a telecommunications serv-
6 ice facility in or on eligible support infra-
7 structure; and

8 (ii) for which a permit, license, or ap-
9 proval from the Commission is required or
10 that is otherwise subject to the jurisdiction
11 of the Commission.

12 (C) A project to deploy a small personal
13 wireless service facility.

14 (D) A project—

15 (i) for the deployment or modification
16 of a communications facility that is to be
17 carried out entirely within a floodplain (as
18 defined in section 9.4 of title 44, Code of
19 Federal Regulations, as in effect on the
20 date of the enactment of this Act); and

21 (ii) for which a permit, license, or ap-
22 proval from the Commission is required or
23 that is otherwise subject to the jurisdiction
24 of the Commission.

25 (E) A project—

1 (i) for the deployment or modification
2 of a communications facility that is to be
3 carried out entirely within a brownfield site
4 (as defined in section 101 of the Com-
5 prehensive Environmental Response, Com-
6 pensation, and Liability Act of 1980 (42
7 U.S.C. 9601)); and

8 (ii) for which a permit, license, or ap-
9 proval from the Commission is required or
10 that is otherwise subject to the jurisdiction
11 of the Commission.

12 (F) A project to permanently remove cov-
13 ered communications equipment or services (as
14 defined in section 9 of the Secure and Trusted
15 Communications Networks Act of 2019 (47
16 U.S.C. 1608)) and to replace such covered com-
17 munications equipment or services with commu-
18 nications equipment or services (as defined in
19 such section) that are not covered communica-
20 tions equipment or services (as so defined).

21 (G) A project that—

22 (i) is to be carried out entirely within
23 an area for which the President, the Gov-
24 ernor of a State, or the Chief Executive of

1 an Indian tribal government has declared a
2 major disaster or an emergency;

3 (ii) is to be carried out not later than
4 5 years after the date on which the Presi-
5 dent, Governor, or Chief Executive made
6 such declaration; and

7 (iii) replaces a communications facility
8 damaged by such disaster or emergency or
9 makes improvements to a communications
10 facility in such area that could reasonably
11 be considered as necessary for recovery
12 from such disaster or emergency or to pre-
13 vent or mitigate any future disaster or
14 emergency.

15 (H) A project for the placement and instal-
16 lation of a new communications facility if—

17 (i) such new facility—

18 (I) will be located within a public
19 right-of-way; and

20 (II) is not more than 50 feet tall
21 or 10 feet taller than any existing
22 structure in the public right-of-way,
23 whichever is higher;

24 (ii) such new facility is—

1 (I) a replacement for an existing
2 communications facility; and

3 (II) the same as, or substantially
4 similar to (as such term is defined by
5 the Commission), the existing commu-
6 nications facility that such new com-
7 munications facility is replacing;

8 (iii) such new facility is a type of com-
9 munications facility that—

10 (I) is described in section
11 6409(d)(1)(B) of the Middle Class
12 Tax Relief and Job Creation Act of
13 2012 (47 U.S.C. 1455(d)(1)(B)); and

14 (II) meets the size limitation of a
15 small antenna established by the Com-
16 mission; or

17 (iv) the placement and installation of
18 such new facility involves the expansion of
19 the site of an existing communications fa-
20 cility not more than 30 feet in any direc-
21 tion.

22 (6) ELIGIBLE SUPPORT INFRASTRUCTURE.—
23 The term “eligible support infrastructure” means in-
24 frastructure that supports or houses a facility for
25 communication by wire (or that is designed for or

1 capable of supporting or housing such a facility) at
2 the time when a request to a State or local govern-
3 ment or instrumentality thereof, or to an Indian
4 tribal government, for authorization to place, con-
5 struct, or modify a telecommunications service facil-
6 ity in or on the infrastructure is submitted to the
7 government or instrumentality.

8 (7) EMERGENCY.—The term “emergency”
9 means—

10 (A) in the case of an emergency declared
11 by the President, an emergency declared by the
12 President under section 501 of the Robert T.
13 Stafford Disaster Relief and Emergency Assist-
14 ance Act (42 U.S.C. 5191); and

15 (B) in the case of an emergency declared
16 by the Governor of a State or the Chief Execu-
17 tive of an Indian tribal government, any occa-
18 sion or instance with respect to which the Gov-
19 ernor or Chief Executive declares that an emer-
20 gency exists (or makes a similar declaration)
21 under State or Tribal law (as the case may be).

22 (8) FEDERAL AUTHORIZATION.—The term
23 “Federal authorization”—

1 (A) means any authorization required
2 under Federal law with respect to a covered
3 project or a covered easement; and

4 (B) includes any permits, special use au-
5 thorizations, certifications, opinions, or other
6 approvals as may be required under Federal law
7 with respect to a covered project or a covered
8 easement.

9 (9) GOVERNOR.—The term “Governor” means
10 the chief executive of any State.

11 (10) INDIAN TRIBAL GOVERNMENT.—The term
12 “Indian tribal government” means the governing
13 body of an Indian Tribe.

14 (11) INDIAN TRIBE.—The term “Indian Tribe”
15 has the meaning given the term “Indian tribe”
16 under section 102 of the Federally Recognized In-
17 dian Tribe List Act of 1994 (25 U.S.C. 5130).

18 (12) MAJOR DISASTER.—The term “major dis-
19 aster” means—

20 (A) in the case of a major disaster de-
21 clared by the President, a major disaster de-
22 clared by the President under section 401 of
23 the Robert T. Stafford Disaster Relief and
24 Emergency Assistance Act (42 U.S.C. 5170);
25 and

1 (B) in the case of a major disaster de-
2 clared by the Governor of a State or the Chief
3 Executive of an Indian tribal government, any
4 occasion or instance with respect to which the
5 Governor or Chief Executive declares that a dis-
6 aster exists (or makes a similar declaration)
7 under State or Tribal law (as the case may be).

8 (13) PERSONAL WIRELESS SERVICE.—The term
9 “personal wireless service” means any fixed or mo-
10 bile service (other than a broadcasting (as defined in
11 section 3 of the Communications Act of 1934 (47
12 U.S.C. 153)) service) provided via licensed or unli-
13 censed frequencies, including—

14 (A) commercial mobile service (as defined
15 in section 332(d) of the Communications Act of
16 1934 (47 U.S.C. 332(d)));

17 (B) commercial mobile data service (as de-
18 fined in section 6001 of the Middle Class Tax
19 Relief and Job Creation Act of 2012 (47 U.S.C.
20 1401));

21 (C) unlicensed wireless service; and

22 (D) common carrier wireless exchange ac-
23 cess service.

24 (14) PERSONAL WIRELESS SERVICE FACIL-
25 ITY.—The term “personal wireless service facility”

1 means a facility used to provide or support the pro-
2 vision of personal wireless service.

3 (15) PUBLIC RIGHT-OF-WAY.—The term “pub-
4 lic right-of-way”—

5 (A) means—

6 (i) the area on, below, or above a pub-
7 lic roadway, highway, street, sidewalk,
8 alley, or similar property (whether cur-
9 rently or previously used in such manner);
10 and

11 (ii) any land immediately adjacent to
12 and contiguous with property described in
13 clause (i) that is within the right-of-way
14 grant; and

15 (B) does not include a portion of the Inter-
16 state System (as such term is defined in section
17 101(a) of title 23, United States Code).

18 (16) SMALL PERSONAL WIRELESS SERVICE FA-
19 CILITY.—The term “small personal wireless service
20 facility” means a personal wireless service facility in
21 which each antenna is not more than 3 cubic feet in
22 volume (excluding a wireline backhaul facility con-
23 nected to such personal wireless service facility).

24 (17) STATE.—The term “State” means each
25 State of the United States, the District of Columbia,

1 and each territory or possession of the United
2 States.

3 (18) TELECOMMUNICATIONS SERVICE.—The
4 term “telecommunications service” has the meaning
5 given such term in section 3 of the Communications
6 Act of 1934 (47 U.S.C. 153).

7 (19) TELECOMMUNICATIONS SERVICE FACIL-
8 ITY.—The term “telecommunications service facil-
9 ity”—

10 (A) means a facility that is designed or
11 used to provide or facilitate the provision of any
12 interstate or intrastate telecommunications
13 service; and

14 (B) includes a facility described in sub-
15 paragraph (A) that is used to provide other
16 services.

17 (20) UNLICENSED WIRELESS SERVICE.—The
18 term “unlicensed wireless service”—

19 (A) means the offering of telecommuni-
20 cations service or information service (as de-
21 fined in section 3 of the Communications Act of
22 1934 (47 U.S.C. 153)) using a duly authorized
23 device that does not require an individual li-
24 cense; and

1 (B) does not include the provision of di-
2 rect-to-home satellite services (as defined in sec-
3 tion 303(v) of the Communications Act of 1934
4 (47 U.S.C. 303(v))).

5 (21) UTILITY FACILITY.—The term “utility fa-
6 cility” means any privately, publicly, or cooperatively
7 owned line, facility, or system for producing, trans-
8 mitting, or distributing power, electricity, light, heat,
9 gas, oil, crude products, water, steam, waste, storm
10 water not connected with highway drainage, or any
11 other similar commodity, including any fire or police
12 signal system or street lighting system, that directly
13 or indirectly serves the public.

14 (22) WIRELINE BACKHAUL FACILITY.—The
15 term “wireline backhaul facility” means an above-
16 ground or underground wireline facility used to
17 transport communications service or other electronic
18 communications from a small personal wireless serv-
19 ice facility or its adjacent network interface device to
20 a communications network.

