

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4141
OFFERED BY MR. FULCHER OF IDAHO**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Broadband for Ameri-
3 cans through Responsible Streamlining Act” or the
4 “BARS Act”.

5 **SEC. 2. APPLICATION OF NEPA AND NHPA TO CERTAIN**
6 **COMMUNICATIONS PROJECTS.**

7 (a) IN GENERAL.—

8 (1) NEPA EXEMPTION.—A Federal authoriza-
9 tion with respect to a covered project may not be
10 considered a major Federal action under section
11 102(2)(C) of the National Environmental Policy Act
12 of 1969 (42 U.S.C. 4332(2)(C)).

13 (2) NATIONAL HISTORIC PRESERVATION ACT
14 EXEMPTION.—A covered project may not be consid-
15 ered an undertaking under section 300320 of title
16 54, United States Code.

17 (b) GRANT OF EASEMENT ON FEDERAL PROP-
18 erty.—

1 (1) NEPA EXEMPTION.—A Federal authoriza-
2 tion with respect to a covered easement for a com-
3 munications facility may not be considered a major
4 Federal action under section 102(2)(C) of the Na-
5 tional Environmental Policy Act of 1969 (42 U.S.C.
6 4332(2)(C)), if—

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

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

14 (2) NATIONAL HISTORIC PRESERVATION ACT
15 EXEMPTION.—A covered easement for a communica-
16 tions facility may not be considered an undertaking
17 under section 300320 of title 54, United States
18 Code, if—

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

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

1 (c) REQUESTS FOR MODIFICATION OF CERTAIN EX-
2 ISTING WIRELESS FACILITIES.—Section 6409(a)(3) of the
3 Middle Class Tax Relief and Job Creation Act of 2012
4 (47 U.S.C. 1455(a)(3)) is amended to read as follows:

5 “(3) APPLICATION OF NEPA; NHPA.—

6 “(A) NEPA EXEMPTION.—A Federal au-
7 thorization with respect to an eligible facilities
8 request may not be considered a major Federal
9 action under section 102(2)(C) of the National
10 Environmental Policy Act of 1969 (42 U.S.C.
11 4332(2)(C)).

12 “(B) NATIONAL HISTORIC PRESERVATION
13 ACT EXEMPTION.—An eligible facilities request
14 may not be considered an undertaking under
15 section 300320 of title 54, United States Code.

16 “(C) FEDERAL AUTHORIZATION DE-
17 FINED.—In this paragraph, the term ‘Federal
18 authorization’—

19 “(i) means any authorization required
20 under Federal law with respect to an eligi-
21 ble facilities request; and

22 “(ii) includes any permits, special use
23 authorizations, certifications, opinions, or
24 other approvals as may be required under

1 Federal law with respect to an eligible fa-
2 cilities request.”.

3 **SEC. 3. PRESUMPTION WITH RESPECT TO CERTAIN COM-**
4 **plete FCC FORMS.**

5 (a) PRESUMPTION.—If an Indian Tribe is shown to
6 have received a complete FCC Form 620 or FCC Form
7 621 (or any successor form), or can be reasonably ex-
8 pected to have received a complete FCC Form 620 or FCC
9 Form 621 (or any successor form), and has not acted on
10 a request contained in such complete form by the date that
11 is 45 days after the date of such receipt or reasonably
12 expected receipt—

13 (1) the Commission and a court of competent
14 jurisdiction (as the case may be) shall presume the
15 applicant with respect to such complete form has
16 made a good faith effort to provide the information
17 reasonably necessary for such Indian Tribe to ascer-
18 tain whether historic properties of religious or cul-
19 tural significance to such Indian Tribe may be af-
20 fected by the undertaking related to such complete
21 form; and

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

24 (b) OVERCOMING PRESUMPTION.—

1 (1) IN GENERAL.—An Indian Tribe may over-
2 come a presumption under subsection (a) upon mak-
3 ing, to the Commission or a court of competent ju-
4 risdiction, a favorable demonstration with respect to
5 1 or more of the factors described in paragraph (2).

6 (2) FACTORS CONSIDERED.—In making a de-
7 termination regarding a presumption under sub-
8 section (a), the Commission or court of competent
9 jurisdiction shall give substantial weight to—

10 (A) whether the applicant with respect to
11 the relevant complete form failed to make a
12 reasonable attempt to follow up with the appli-
13 cable Indian Tribe not earlier than 30 days,
14 and not later than 50 days, after the applicant
15 submitted a complete FCC Form 620 or FCC
16 Form 621 (as the case may be) to such Indian
17 Tribe; and

18 (B) whether the rules of the Commission,
19 or FCC Form 620 or FCC Form 621, are
20 found to be in violation of a Nationwide Pro-
21 grammatic Agreement of the Commission.

22 **SEC. 4. RULE OF CONSTRUCTION.**

23 Nothing in this Act or any amendment made by this
24 Act may be construed to affect the obligation of the Com-
25 mission to evaluate radiofrequency exposure under the Na-

1 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
2 et seq.).

3 **SEC. 5. DEFINITIONS.**

4 In this Act:

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

9 (2) COMMISSION.—The term “Commission”
10 means the Federal Communications Commission.

11 (3) COMMUNICATIONS FACILITY.—The term
12 “communications facility” has the meaning given the
13 term “communications facility installation” in sec-
14 tion 6409(d) of the Middle Class Tax Relief and Job
15 Creation Act of 2012 (47 U.S.C. 1455(d)).

16 (4) COVERED EASEMENT.—The term “covered
17 easement” means an easement, right-of-way, or lease
18 with respect to a building or other property owned
19 by the Federal Government, excluding Tribal land
20 held in trust by the Federal Government (unless the
21 Indian tribal government with respect to such land
22 requests that the Commission not exclude the land
23 for purposes of this definition), for the right to in-
24 stall, construct, modify, or maintain a communica-
25 tions facility or a utility facility.

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

3 (A) A project—

4 (i) for—

5 (I) the mounting or installation
6 of a personal wireless service facility
7 with another personal wireless service
8 facility that exists at the time at
9 which a request for authorization of
10 such mounting or installation is sub-
11 mitted to a State or local government
12 or instrumentality thereof or to an In-
13 dian tribal government; or

14 (II) the modification of a per-
15 sonal wireless service facility; and

16 (ii) for which a permit, license, or ap-
17 proval from the Commission is required or
18 that is otherwise subject to the jurisdiction
19 of the Commission.

20 (B) A project—

21 (i) for the placement, construction, or
22 modification of a telecommunications serv-
23 ice facility in or on eligible support infra-
24 structure; and

1 (ii) for which a permit, license, or ap-
2 proval from the Commission is required or
3 that is otherwise subject to the jurisdiction
4 of the Commission.

5 (C) A project to deploy a small personal
6 wireless service facility.

7 (D) A project—

8 (i) for the deployment or modification
9 of a communications facility that is to be
10 carried out entirely within a floodplain (as
11 defined in section 9.4 of title 44, Code of
12 Federal Regulations, as in effect on the
13 date of the enactment of this Act); and

14 (ii) for which a permit, license, or ap-
15 proval from the Commission is required or
16 that is otherwise subject to the jurisdiction
17 of the Commission.

18 (E) A project—

19 (i) for the deployment or modification
20 of a communications facility that is to be
21 carried out entirely within a brownfield site
22 (as defined in section 101 of the Com-
23 prehensive Environmental Response, Com-
24 pensation, and Liability Act of 1980 (42
25 U.S.C. 9601)); and

1 (ii) for which a permit, license, or ap-
2 proval from the Commission is required or
3 that is otherwise subject to the jurisdiction
4 of the Commission.

5 (F) A project to permanently remove cov-
6 ered communications equipment or services (as
7 defined in section 9 of the Secure and Trusted
8 Communications Networks Act of 2019 (47
9 U.S.C. 1608)) and to replace such covered com-
10 munications equipment or services with commu-
11 nications equipment or services (as defined in
12 such section) that are not covered communica-
13 tions equipment or services (as so defined).

14 (G) A project that—

15 (i) is to be carried out entirely within
16 an area for which the President, the Gov-
17 ernor of a State, or the Chief Executive of
18 an Indian tribal government has declared a
19 major disaster or an emergency;

20 (ii) is to be carried out not later than
21 5 years after the date on which the Presi-
22 dent, Governor, or Chief Executive made
23 such declaration; and

24 (iii) replaces a communications facility
25 damaged by such disaster or emergency or

1 makes improvements to a communications
2 facility in such area that could reasonably
3 be considered as necessary for recovery
4 from such disaster or emergency or to pre-
5 vent or mitigate any future disaster or
6 emergency.

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

9 (i) such new facility—

10 (I) will be located within a public
11 right-of-way; and

12 (II) is not more than 50 feet tall
13 or 10 feet taller than any existing
14 structure in the public right-of-way,
15 whichever is higher;

16 (ii) such new facility is—

17 (I) a replacement for an existing
18 communications facility; and

19 (II) the same as, or substantially
20 similar to (as such term is defined by
21 the Commission), the existing commu-
22 nications facility that such new com-
23 munications facility is replacing;

24 (iii) such new facility is a type of com-
25 munications facility that—

1 (I) is described in section
2 6409(d)(1)(B) of the Middle Class
3 Tax Relief and Job Creation Act of
4 2012 (47 U.S.C. 1455(d)(1)(B)); and

5 (II) meets the size limitation of a
6 small antenna established by the Com-
7 mission; or

8 (iv) the placement and installation of
9 such new facility involves the expansion of
10 the site of an existing communications fa-
11 cility not more than 30 feet in any direc-
12 tion.

13 (6) ELIGIBLE SUPPORT INFRASTRUCTURE.—
14 The term “eligible support infrastructure” means in-
15 frastructure that supports or houses a facility for
16 communication by wire (or that is designed for or
17 capable of supporting or housing such a facility) at
18 the time when a request to a State or local govern-
19 ment or instrumentality thereof, or to an Indian
20 tribal government, for authorization to place, con-
21 struct, or modify a telecommunications service facil-
22 ity in or on the infrastructure is submitted to the
23 government or instrumentality.

24 (7) EMERGENCY.—The term “emergency”
25 means—

1 (A) in the case of an emergency declared
2 by the President, an emergency declared by the
3 President under section 501 of the Robert T.
4 Stafford Disaster Relief and Emergency Assist-
5 ance Act (42 U.S.C. 5191); and

6 (B) in the case of an emergency declared
7 by the Governor of a State or the Chief Execu-
8 tive of an Indian tribal government, any occa-
9 sion or instance with respect to which the Gov-
10 ernor or Chief Executive declares that an emer-
11 gency exists (or makes a similar declaration)
12 under State or Tribal law (as the case may be).

13 (8) FEDERAL AUTHORIZATION.—The term
14 “Federal authorization”—

15 (A) means any authorization required
16 under Federal law with respect to a covered
17 project or a covered easement; and

18 (B) includes any permits, special use au-
19 thorizations, certifications, opinions, or other
20 approvals as may be required under Federal law
21 with respect to a covered project or a covered
22 easement.

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

1 (10) INDIAN TRIBAL GOVERNMENT.—The term
2 “Indian tribal government” means the governing
3 body of an Indian Tribe.

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

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

10 (A) in the case of a major disaster de-
11 clared by the President, a major disaster de-
12 clared by the President under section 401 of
13 the Robert T. Stafford Disaster Relief and
14 Emergency Assistance Act (42 U.S.C. 5170);
15 and

16 (B) in the case of a major disaster de-
17 clared by the Governor of a State or the Chief
18 Executive of an Indian tribal government, any
19 occasion or instance with respect to which the
20 Governor or Chief Executive declares that a dis-
21 aster exists (or makes a similar declaration)
22 under State or Tribal law (as the case may be).

23 (13) PERSONAL WIRELESS SERVICE.—The term
24 “personal wireless service” means any fixed or mo-
25 bile service (other than a broadcasting (as defined in

1 section 3 of the Communications Act of 1934 (47
2 U.S.C. 153)) service) provided via licensed or unli-
3 censed frequencies, including—

4 (A) commercial mobile service (as defined
5 in section 332(d) of the Communications Act of
6 1934 (47 U.S.C. 332(d)));

7 (B) commercial mobile data service (as de-
8 fined in section 6001 of the Middle Class Tax
9 Relief and Job Creation Act of 2012 (47 U.S.C.
10 1401));

11 (C) unlicensed wireless service; and

12 (D) common carrier wireless exchange ac-
13 cess service.

14 (14) PERSONAL WIRELESS SERVICE FACIL-
15 ITY.—The term “personal wireless service facility”
16 means a facility used to provide or support the pro-
17 vision of personal wireless service.

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

20 (A) means—

21 (i) the area on, below, or above a pub-
22 lic roadway, highway, street, sidewalk,
23 alley, or similar property (whether cur-
24 rently or previously used in such manner);
25 and

1 (ii) any land immediately adjacent to
2 and contiguous with property described in
3 clause (i) that is within the right-of-way
4 grant; and

5 (B) does not include a portion of the Inter-
6 state System (as such term is defined in section
7 101(a) of title 23, United States Code).

8 (16) SMALL PERSONAL WIRELESS SERVICE FA-
9 CILITY.—The term “small personal wireless service
10 facility” means a personal wireless service facility in
11 which each antenna is not more than 3 cubic feet in
12 volume (excluding a wireline backhaul facility con-
13 nected to such personal wireless service facility).

14 (17) STATE.—The term “State” means each
15 State of the United States, the District of Columbia,
16 and each territory or possession of the United
17 States.

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

22 (19) TELECOMMUNICATIONS SERVICE FACIL-
23 ITY.—The term “telecommunications service facil-
24 ity”—

1 (A) means a facility that is designed or
2 used to provide or facilitate the provision of any
3 interstate or intrastate telecommunications
4 service; and

5 (B) includes a facility described in sub-
6 paragraph (A) that is used to provide other
7 services.

8 (20) UNLICENSED WIRELESS SERVICE.—The
9 term “unlicensed wireless service”—

10 (A) means the offering of telecommuni-
11 cations service or information service (as de-
12 fined in section 3 of the Communications Act of
13 1934 (47 U.S.C. 153)) using a duly authorized
14 device that does not require an individual li-
15 cense; and

16 (B) does not include the provision of di-
17 rect-to-home satellite services (as defined in sec-
18 tion 303(v) of the Communications Act of 1934
19 (47 U.S.C. 303(v))).

20 (21) UTILITY FACILITY.—The term “utility fa-
21 cility” means any privately, publicly, or cooperatively
22 owned line, facility, or system for producing, trans-
23 mitting, or distributing power, electricity, light, heat,
24 gas, oil, crude products, water, steam, waste, storm
25 water not connected with highway drainage, or any

1 other similar commodity, including any fire or police
2 signal system or street lighting system, that directly
3 or indirectly serves the public.

4 (22) WIRELINE BACKHAUL FACILITY.—The
5 term “wireline backhaul facility” means an above-
6 ground or underground wireline facility used to
7 transport communications service or other electronic
8 communications from a small personal wireless serv-
9 ice facility or its adjacent network interface device to
10 a communications network.

