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December 20, 2018

VIA ELECTRONIC FILING

EX PARTE

Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: WC Docket No. 17-84: Accelerating Wireline Broadband Deployment by
Removing Barriers to Infrastructure Investment**

Dear Ms. Dortch:

On December 6, 2018, Peter Witty, General Counsel of Cable One, Inc. (“Cable One”) and the undersigned met with Commission staff in a series of meetings discussed in the *ex parte* filed by the undersigned on December 7.^{1/} During one of those meetings, Evan Swarztrauber, Policy Advisor to Commissioner Carr, inquired whether Cable One had any recent difficulties deploying fiber network on Federal lands, and if so, if it could share the details of such difficulties. Below we describe a recent instance where Cable One has been delayed by almost three years waiting for Forest Service approval to run a single fiber link to an Arizona community surrounded by national forest.

The link in question is a fiber line from Show Low, Arizona to Payson, Arizona. For your reference we have attached our timeline for the project, detailing the never-ending communications and non-decisions by the Forest Service that have unnecessarily delayed the fiber deployment.^{2/} As described therein and below, our project is a case study in the difficulties working with Federal agencies to build-out fiber to communities located within or near federal lands.

Payson is a city in Gila County with a population of around 15,000. Located about 80 miles northeast of Phoenix, Payson is surrounded completely by the Tonto National Forest.

^{1/} See Letter from Craig A. Gilley, Counsel for Cable One, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 05-311 *et al.* (Dec. 7, 2018).

^{2/} Cable One attaches for reference a timeline detailing each interaction, decision and communication with the various Forest Service staff members involved in the approval process.

Because it is surrounded, and because the fiber run also runs through the Apache-Sitgreaves National Forest, Cable One has no choice but to obtain Forest Service permission to run fiber to the city. Unfortunately, that process has been frustratingly slow.

In March 2016, Cable One applied for permission to run the fiber through the national forest along the existing right-of-way between Show Low and Payson adjacent to State Highway 260. Biological and Cultural surveys are required for such a project under National Environmental Policy Act (“NEPA”) and the National Historic Preservation Act (“NHPA”), and such surveys have to be approved by the Forest Service before construction.

Cable One and its consulting contractor began conducting these surveys in May 2016 and were completed and submitted to the agency in July 2016. The Forest Service quickly approved the Biological Assessment in November 2016. Cable One’s point-of-contact with the Forest Service then indicated that the project’s final review would likely be completed sometime in summer 2017, and indicated at one point that the project was a “top priority” of the Forest Service.

Throughout 2016 and up until July 2017, the Forest Service concurred with Cable One’s position that the project was subject to a “Categorical Exclusion” under NEPA, meaning the project would not be subject to a full environmental assessment, a step which would have added several months and hundreds of thousands (if not millions) of dollars to the project. Then, in July 2017, the Forest Service changed that position, indicating it *would* require such an assessment, calling the project’s timeline and budget into question. Fortunately, the Forest Service reversed its decision in August 2017 and has since indicated it will stand by its original judgment that a Categorical Exclusion applies.

During this time, however, the Forest Service was dragging its feet on the required NHPA Cultural Report, preventing the project from getting full approval and beginning construction. The first version of the Cultural Report, submitted in August 2016, was put on hold while Forest Service archeologists considered whether surveys of private lands would be required. Cable One did not hear anything from the reviewing archeologists as to whether it needed to include private lands in the Cultural Report until March 2017 (more than six months after submission).

In June 2017, Cable One resubmitted a new version of the Cultural Report, with private lands included. In response, in August 2017, the Forest Service archeologists requested even more cultural data, leading to a third version of the Cultural Report being submitted in February 2018. The Forest Service then request additional edits to the report in July 2018, leading to a *fourth* version of the Cultural Report being submitted in September 2018, with further additional information provided the following month.

This past October, Cable One was told the report would finally be approved “within a few weeks.” When that did not happen, the Forest Service personnel pushed the timeline for next action to mid-January 2019 at the earliest, after Forest Service staff returned from annual leave.

At this point, nearly 3 years after the initial applications were submitted in March 2016 and 18 months after the initial approval target of summer 2017, Cable One has no choice but to soldier on and quickly respond to further staff requests. We remain hopeful despite the delay, that this project can be completed sometime in 2019.

That all being said, we believe that a nine to twelve-month approval process should have been more than adequate for the twenty-two Forest Service staff involved to complete their work reviewing the required surveys and to approve the fiber run. In January we will enter the thirty-second month of the process, with no firm commitment from the Forest Service on when a final decision will be made and construction can begin.

Timely and cost effective access to federally managed rights of way for broadband deployment has been recognized as “a key to widespread broadband deployment” by the FCC, NTIA and other agencies, leading to a 2004 document advocating for better Federal policies on managing such access.^{3/} As demonstrated by Cable One’s experience in northwest Arizona, the Forest Service is clearly falling short of this goal in handling this project. Most importantly, delays such as those experienced in this project harm the people located in communities like Payson who are unable to access upgraded broadband facilities, for little reason other than hurdles imposed by their own government.

Please contact the undersigned with any further questions about his matter.

Sincerely,



Craig A. Gilley

cc: Evan Swarztrauber

^{3/} National Telecommunications and Information Administration, IMPROVING RIGHTS-OF-WAY MANAGEMENT ACROSS FEDERAL LANDS: A ROADMAP FOR GREATER BROADBAND DEPLOYMENT, April 2004.

Cable One Show Low to Payson Fiber Optic Cable Deployment Project Timeline

Date Prepared: December 12, 2018

Event	Date	Notes
Initial project scope and fee provided by EnviroSystems to Cable One	Feb-16	
Project application submitted to the Forest Service by Cable One and Distribution Design Consultants	Mar-16	
Project Initiation meeting between Cable One, EnviroSystems, and Tina Sorenson (Forest Service Apache-Sitgreaves National Forest Special Uses Administrator)	Mar-16	<i>Were told that Categorical Exclusions would be the appropriate level of NEPA for this project. Were told that a 100% archaeological survey would not be</i>
Started biological and cultural surveys	May-16	
Finished biological surveys	Jun-16	
Finished cultural surveys	Jul-16	
Biological resources report draft 1 submitted	Jul-16	
Biological Assessment drafted	Jul-16	
Biological Assessment comments received from Christina Akins (Forest Service Tonto National Forest Wildlife Biologist)	Jul-16	
Comments for draft 1 of the biological resources report received from all Forest biologists	Aug-16	
Biological Assessment revised and approved by Forest Service	Aug-16	
Cultural report submitted to Forest Service, draft 1	Aug-16	
Cultural report not reviewed, Forest Service archeologists were deciding if private lands should be surveyed	Aug-16	
Biological Assessment comments received from US Fish and Wildlife Service	Oct-16	
Biological Assessment concurrence letter received from US Fish and Wildlife Service	Nov-16	<i>The Biological Assessment was completely finalized at this point.</i>
Cultural report, draft 1, declined without review	Mar-17	<i>Denise Ryan (Tonto National Forest Archaeologist), on behalf of all Forest archaeologists, declined to review report because private land was not inventoried.</i>

EnviroSystems surveyed the north side of Highway 260 in the underground portion for cultural resources (previously surveyed of the south side of highway), per change in scope from Distribution Design Consultants	Mar-17	
Forest archaeologists determined they want private lands surveyed and included in the report	Mar-17	
EnviroSystems conducted additional cultural surveys on private lands	Mar-17	
Biological report draft 2 submitted	Mar-17	
Meeting with all Forest Service personnel	Apr-17	<i>Were told that an Environmental Assessment would be the proper level of NEPA analysis for this project. Kevin Holmes (Apache-Sitgreaves National Forest Staff Officer) and Chris Welker (Tonto National Forest Zone Recreation and Lands Staff) were identified as the</i>
Comments for Biological Assessment draft 2 received from Forest biologists	May-17	
Meeting with Forest Service personnel, Anne Thomas (Tonto National Forest NEPA Planner) identified as single point of contact	Jun-17	<i>Decided that a Categorical Exclusion NEPA document would be sufficient. Were told that realistic project</i>
EnviroSystems drafted and sent scoping letter/Categorical Exclusions language for both Forests for review.	Jun-17	<i>Drafts were sent June 14, 2017.</i>
Received comments from Anne Thomas (Tonto National Forest NEPA Planner), Tim Gilloon (Apache-Sitgreaves National Forest NEPA Program Manager), and Chris Welker (Tonto National Forest Zone Recreation and Lands Staff) about Categorical Exclusions	Jun-17	
EnviroSystems Submitted revised scoping letter/Categorical Exclusions language to both Forests	Jun-17	
Cultural report, draft 2, submitted by EnviroSystems (with private lands included)	Jun-17	
Biological resources report draft 3 Submitted	Jun-17	
Comments for draft 3 received from Forest biologists	Jul-17	
Final biological resources report submitted and approved	Jul-17	
Email from Kevin Holmes (Apache-Sitgreaves National Forest Staff Officer) regarding cultural resources and impact on NEPA	Jul-17	<i>Were told that we will now need to do an Environmental Assessment for NEPA compliance because the Forest archaeologists believed that there would be adverse effects from the project. Through</i>

Reply from Tonto National Forest and Apache-Sitgreaves National Forest with comments on cultural report, draft 2	Jul-17	<i>Comments are dated July 6, but EnviroSystems did not receive them until July 26, 2017.</i>
Meeting with all Forest Service personnel	Aug-17	<i>Were told that there are a lot of comments on the cultural report and that a meeting should be set up to discuss the comments. Were also told that the schedule for project completion is dependent upon how quickly the cultural resource review can be completed. Anne Thomas (Tonto National Forest NEPA Planner)</i>
EnviroSystems met with Apache-Sitgreaves National Forest to discuss comments on cultural report	Aug-17	<i>Meeting included Kris Hill (Tonto National Forest Archaeologist) (via teleconference), Denise Ryan (Tonto National Forest Archaeologist), Sara Stauffer (Apache-Sitgreaves National Forest Archaeologist), and Esther Morgan (Apache-Sitgreaves National Forest Archaeologist) for the Forests. Lynn Neal and Greg</i>
Cultural data was requested from Apache-Sitgreaves National Forest by EnviroSystems	Aug-17	<i>EnviroSystems was told all data needed was electronic and would be sent by Apache-Sitgreaves National</i>
Some cultural data was received from Apache-Sitgreaves National Forest	Oct-17	<i>Some data received digitally between Sept. 21 and Oct. 1, 2017-EnviroSystems had to go to Apache-Sitgreaves National Forest District office to retrieve non-electronic</i>
Additional cultural fieldwork completed as directed by Esther Morgan (Apache-Sitgreaves National Forest Archaeologist)	Nov-17	
ADOT meeting between Cable One, EnviroSystems, and Distribution Design Consultants		<i>Discussed what is expected for the portion of the project that lies in the ADOT Highway 260 right-of-way.</i>
Anne Thomas (Tonto National Forest NEPA Planner) put out email with schedule/response	Jan-18	<i>Esther committed to providing revisions by March 31, 2018.</i>
Revised cultural report, draft 3, submitted to Esther Morgan (Apache-Sitgreaves National Forest Archaeologist)	Feb-18	<i>There was no need to resubmit to Tonto National Forest, because they had completed review and satisfied with compliance for portion of project on</i>
EnviroSystems contacted Esther Morgan (Apache-Sitgreaves National Forest Archaeologist) for comments	Mar-18	<i>EnviroSystems was told review of report had not been started.</i>
Addition to scope of poles in the underground portion, and all reports revised to include pole discussion.	Apr-18	<i>Did not need more cultural surveys, because locations had previously been surveyed.</i>

Information about pole revision submitted to Esther Morgan (Apache-Sitgreaves National Forest Archaeologist) to assist with cultural report draft 3 review	Apr-18	<i>As of April 24, 2018, Esther Morgan (Apache-Sitgreaves National Forest Archaeologist) had not reviewed cultural report, draft 3.</i>
Biological resources report with pole revision submitted to Forest	May-18	
Final biological report with pole revision approved	May-18	
Anne Thomas (Tonto National Forest NEPA Planner) and Mike Martinez (Tonto National Forest Staff Officer) notified EnviroSystems that they were no longer going to lead the project or be the single point of contact	May-18	
Mark McEntarffer (Tonto National Forest NEPA Planner) was identified as the single point of contact and project lead moving forward	May-18	<i>He confirmed that he had the scoping letter/Categorical Exclusion drafts and would be moving forward with the approach laid out by Anne</i>
Esther Morgan (Apache-Sitgreaves National Forest Archaeologist) emailed a reply to the submission of draft 3 of the cultural report.	Jul-18	<i>EnviroSystems was told by Esther Morgan (Apache-Sitgreaves National Forest Archaeologist) that comments would be received the following day on draft 3 of the cultural report and that "congressional" made</i>
Comments received on cultural report, draft 3, from Mark McEntarffer (Tonto National Forest NEPA Planner)	Aug-18	<i>Comments were by Esther Morgan (Apache-Sitgreaves National Forest Archaeologist), via Mark McEntarffer</i>
Final cultural report, draft 4, sent to Mark McEntarffer (Tonto National Forest NEPA Planner)	Sep-18	
EnviroSystems sent the draft scoping letters (included language to be used as Categorical Exclusions) to Kris Hill (Tonto National Forest Archaeologist)	Sep-18	<i>Goal was to verify cultural resource mitigation measures.</i>
Esther Morgan (Apache-Sitgreaves National Forest Archaeologist) and Kris Hill (Tonto National Forest Archaeologist) were coordinating to finalize the cultural report	Oct-18	
Comments were received from Ester Morgan (Apache-Sitgreaves National Forest Archaeologist) on the cultural report, draft 4	Oct-18	
EnviroSystems responded to cultural report comments and provided additional information	Oct-18	<i>Additional info included site plan maps and GIS data.</i>
Meeting with O'Halleran's representatives about Cable One's project	Oct-18	
Stephanie of EnviroSystems received phone calls from Stephen Best (Apache-Sitgreaves National Forest Supervisor) and Will Reed (Regional Archaeologist)	Oct-18	<i>EnviroSystems was assured that cultural report would be finalized within a few weeks. EnviroSystems was told to coordinate with Kevin Holmes (Apache-</i>

EnviroSystems reached out to Kevin Holmes (Apache-Sitgreaves National Forest Staff Officer) regarding status of cultural report	Nov-18	<i>Kevin Holmes (Apache-Sitgreaves National Forest Staff Officer) committed to having SHPO consultation complete by January 30, 2019 . This occurred the same</i>
Email from Mark McEntarffer (Tonto National Forest NEPA Planner) requesting Plan of Development (POD)	Nov-18	<i>Mark McEntarffer (Tonto National Forest NEPA Planner) requested that EnviroSystems start preparing</i>
EnviroSystems met with Cable One to discuss the POD	Nov-18	
Call with Kevin Holmes (Apache-Sitgreaves National Forest Staff Officer) about cultural report status	Dec-18	<i>Told by Kevin Holmes (Apache-Sitgreaves National Forest Staff Officer) that Esther Morgan (Apache-Sitgreaves National Forest Archaeologist) will finish</i>

Forest Service Staff Involved in Review of Payson Fiber Optic Cable Deployment Project

Note: There were two Forests and three Ranger Districts involved in this project - Apache-Sitgreaves National Forest (Black Mesa and Lakeside

Name	Forest	Title	Roles/Responsibilities
Stephen Best	Apache-Sitgreaves National Forest	Forest Supervisor	<i>He was trying to get the cultural resources report moving along.</i>
Tom Torres	Tonto National Forest	Assistant Forest Supervisor	<i>He was working with Stephen Best of Apache-Sitgreaves National Forest to try to get movement on the project.</i>
Tina Sorenson	Apache-Sitgreaves National Forest	Special Uses Administrator at Lakeside Ranger District	<i>She was involved in most of the project meetings.</i>
Debbie Roznovak	Apache-Sitgreaves National Forest	Special Uses Administrator at Black Mesa Ranger District	<i>She was involved in most of the project meetings.</i>
Tim Gilloon	Apache-Sitgreaves National Forest	NEPA Program Manager at Forest Supervisor's Office	<i>He was involved in most of the project meetings.</i>
Kevin Holmes	Apache-Sitgreaves National Forest	Infrastructure and Operations Staff Officer at Forest Supervisor's Office	<i>He has been part of this project almost from the beginning as Esther's supervisor and assisting with the regulatory process.</i>
Randall Chavez	Apache-Sitgreaves National Forest	Sitgreaves Zone Recreation and Lands Staff	<i>He was involved in most of the project meetings.</i>
Chris Welker	Tonto National Forest	Zone Recreation and Lands Staff	<i>He was the initial project lead.</i>

Anne Thomas	Tonto National Forest	NEPA Planner at Forest Supervisor's Office	<i>She came on in 2016 as the single point of contact and then was removed as the single point of contact in 2018.</i>
Mike Martinez	Tonto National Forest	Ecosystem Staff Officer at Forest Supervisor's Office	<i>Anne Thomas' supervisor.</i>
Mark McEntarffer	Tonto National Forest	NEPA Planner at Forest Supervisor's Office	<i>He was identified as the single point of contact following Anne Thomas.</i>
Jason Scow	Tonto National Forest	Staff Officer at Forest Supervisor's Office	<i>Mark McEntarffer's supervisor and he made sure that the new Cable One Project got on the 2019 Tonto NF Program of Work.</i>
Will Reed	Region Office	Regional Archaeologist	<i>He was trying to get the cultural resources report moving along.</i>
Kris Hill	Tonto National Forest	Archaeologist at Forest Supervisor's Office	<i>She is/was going to help take care of cultural report submittal and SHPO and tribal consultation. We are not sure what her role is at this time.</i>
Esther Morgan	Apache-Sitgreaves National Forest	Archaeologist at Forest Supervisor's Office	<i>She has been the Forest Archaeologist overseeing the cultural resources report since the largest part of the project is on the Apache-Sitgreaves National Forest. She currently has the report and is on leave until mid-January. EnviroSystems has been told she is going to be the one who will submit the report to SHPO and do tribal consultation.</i>
Sara Stauffer	Apache-Sitgreaves National Forest	Former District Archaeologist	<i>Was originally going to help with cultural report review.</i>
Denise Ryan	Tonto National Forest	Former Payson Ranger District Archaeologist	<i>She provided input in the original drafts of the cultural surveys and report but retired early in 2018.</i>
Charlie Denton	Apache-Sitgreaves National Forest	Lakeside Ranger District Wildlife Staff (Biologist)	<i>Provided input and comments in the biological resources report.</i>

Suzanne DeRosier	Apache-Sitgreaves National Forest	Black Mesa Ranger District Wildlife Biologist	<i>Provided input and comments in the biological resources report.</i>
David Seery	Apache-Sitgreaves National Forest	Black Mesa Ranger District Supervisory Wildlife Biologist	<i>Provided initial input and comments on the biological survey and resources report before Suzanne DeRosier took over.</i>
Christina Akins	Tonto National Forest	Payson and Pleasant Valley Ranger Districts Biologist	<i>Provided input and comments in the biological resources report and biological assessment.</i>
John Wilcox	Tonto National Forest	Former Payson and Pleasant Valley Ranger Districts Biologist	<i>Provided input and comments in the biological resources report and biological assessment before Christina Akins took over.</i>