

**Before the
Council on Environmental Quality
Washington, D.C. 20230**

In the Matter of)	
)	
National Environmental Policy Act)	CEQ–2023– 0003
Implementing Regulations Revisions Phase 2)	RIN 0331–AA07

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

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to the Notice of Proposed Rulemaking (“*Notice*”) issued by the Council on Environmental Quality (“CEQ”), seeking comment on the “Bipartisan Permitting Reform Implementation Rule.”² The proposals found in the *Notice* are intended to revise CEQ’s National Environmental Policy Act (“NEPA”) regulations, including steps to implement the Fiscal Responsibility Act’s (“FRA”) amendments to that statute.

NTCA proposes herein that “categorical exclusions” (“CEs”) that streamline the NEPA process account for the specific circumstances presented by the construction of wireline and wireless broadband networks, and that these further be applicable across all federal agencies. In addition, NTCA urges CEQ to recognize that broadband providers often find compliance with the National Historic Preservation Act (“NHPA”) to be far more arduous and time-consuming than NEPA reviews. Failing to address NHPA concerns as well risks rendering moot in many cases the gains that might otherwise be realized from NEPA streamlining efforts. Attention to

¹ 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.

² National Environmental Policy Act Implementing Regulations Revisions Phase 2, Council on Environmental Quality, Notice of Proposed Rulemaking, RIN 0331–AA07, 88 FR 49924 (Jul. 31, 2023) (“*Notice*”).

each of these – NEPA *and* NHPA – is critical to ensure that tens of billions of dollars in federal funding meant to address the persistent “digital divide” in fact succeed in doing so.

As context for understanding the challenges that NTCA members face and their interest in the *Notice*, these providers operate in some of the most remote, costly-to-serve rural areas of the nation, where densities average approximately six locations per mile. Rocky and mountainous terrain, as well as weather-shortened construction seasons (where the ground can be frozen for 4 to 5 months each year), are additional challenges. Despite operating with an average of fewer than 30 employees, NTCA members have deployed advanced networks in deeply rural spaces, with a recent survey indicating that 80 percent of members’ customers have access to robust fiber connections. As NTCA recounted in testimony before the United States House Committee on Energy and Commerce, Subcommittee on Communications and Technology,³ obtaining access to federal lands for the purposes of broadband facilities installation – or otherwise obtaining a permit when a project is considered a “major federal action” under NEPA and/or a “federal undertaking” pursuant to NHPA – 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 nearly two years in obtaining necessary permissions for construction of such infrastructure.

Even as NTCA members have made remarkable progress in deploying broadband in deeply rural America, there is more work to be done in these areas to reach the remaining customers in their areas and the more widespread “broadband deserts” where other providers

³ NTCA Executive Vice President Mike Romano Testifies Before House on Broadband Permitting Reform Apr 19, 2023, testimony available at: https://d1dth6e84htgma.cloudfront.net/4_19_23_Testimony_Romano_c356908700.pdf?updated_at=2023-04-18T20:19:59.156Z

have largely failed to invest in upgrading networks. The Broadband Equity, Access, and Deployment (“BEAD”) Program created by the Infrastructure Investment and Jobs Act of 2021 (“IIJA”),⁴ among other initiatives,⁵ will be essential to help close this gap, and these initiatives underscore that Congress considers this a nationwide priority. Successful achievement of this congressional vision, however, compels obtaining permits on federal lands, along interstate and state highways, through local and private rights-of-way, and on poles and across railroad crossings. Looking forward, all of these challenges will become more acute as the BEAD program begins to distribute funds alongside other efforts such as ReConnect and the CPF, placing greater strains on permitting offices and agencies and putting at risk the viability of projects in certain cases.

Thus, ensuring that the NEPA process does not become a “bottleneck” that undermines the national broadband availability goals articulated by Congress requires above all else CEs specific to the construction of broadband Internet access facilities and the impact they have on the environment.⁶ As the *Notice* indicates, the proposed rules are intended to allow for CEs that are “tailored to specific environmental contexts or project types.”⁷ Burying fiber in a right-of-

⁴ Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) (“IIJA”).

⁵ The ReConnect loan and grant program administered by the Rural Utilities Service, as well as the Capital Projects Fund (“CPF”) overseen by the U.S. Department of Treasury in partnership with States, are among the broadband funding initiatives that, in addition to the BEAD program, aim to address the needs of unserved or underserved Americans long in need of broadband service.

⁶ For wireline providers, this includes both buried and aerial fiber optic cable as well as network “aggregation points” (i.e., splitters or other electronics) and associated physical equipment (including backup power facilities). This is to be distinguished from wireless broadband networks that utilize towers/antennas and similar infrastructure and thus any “broadband related” CEs should incorporate this distinction.

⁷ *Notice*, 88 FR 49937.

way next to a federal highway – particularly one that has been recently expanded – is a very different proposition from an environmental standpoint than installation of a gas or oil pipeline, and thus CEs should obviously reflect that.

Moreover, even as some federal agencies have taken steps to adopt broadband-specific CEs,⁸ it is important that these be applicable across federal agencies. NTCA members’ limited staff resources – and their limited financial ability to hire outside engineering, environmental, archaeological, and other experts necessary to navigate NEPA/NHPA requirements and ensure that projects are designed from the beginning to fit within the confines of CEs – are strained even further in the face of navigating these processes and securing these approvals across various agencies. CEs applicable across agencies would allow providers familiar with those applicable to the ReConnect program, for example, to seamlessly transition to review processes that will be applicable to the BEAD program once it comes online. Here again, the *Notice* implicitly recognizes this, as it states that “section 109 [of the FRA] allows a Federal agency to use another agency's CE.”⁹ NTCA simply urges CEQ to go one step further and encourage, if not require, that federal agencies use a single unified set of CEs for broadband projects – this will limit the burden on providers as well as agency staff that can rely on CEs already approved by CEQ for other agencies.

Just as importantly, CEQ should also look to streamline processes required by the NHPA, as compliance with these can be long and arduous for broadband providers. It has been NTCA

⁸ See National Telecommunications and Information Administration (“NTIA”) notice/request for comments, RIN 0660-XC05 (88 FR 19089, Mar. 30, 2023) (seeking comment on 33 categorical exclusions that would be applicable to each of the NTIA broadband programs contained in the IJA).

⁹ *Notice*, 88 FR 49925.

members' experience that these NHPA processes can, in some cases, be the source of delays far in excess of those attributable to NEPA compliance – CEQ should thus ensure that its commendable efforts to streamline the latter where possible are not rendered ineffective or mooted altogether by providers' inability to navigate the former with similar speed. Put another way, fixing issues related to NEPA will be of limited effect and value if NHPA processes are left unchanged. To address this, adoption of National Programmatic Agreements (“NPA”) could, if developed in consultation with, and approval of, all relevant preservation officials, achieve a similar streamlining effect as the NEPA CEs discussed above while also ensuring that critically important historic and Tribal lands and artifacts are respected as the law intended. NPAs adopted by/in consultation with CEQ and applicable across federal agencies can effectuate a more streamlined process for broadband funding program awardees to satisfy their historic and Tribal preservation requirements with minimum consultation with State Historic Preservation Officers and Tribal officials, based on the type of activity that is being undertaken.

Respectfully submitted,



By: /s/ Michael R. Romano
Michael R. Romano
Executive Vice President

Brian J. Ford
Vice President – Federal Regulatory

NTCA–The Rural Broadband
Association
4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203
mromano@ntca.org