

**Before the
Advisory Council on Historic Preservation**

In the Matter of)
)
Proposed Amendment to Program Comment for)
Communications Projects on Federal Lands and)
Properties)

**COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION
AND
ACA CONNECTS – AMERICA’S COMMUNICATIONS ASSOCIATION**

NTCA–The Rural Broadband Association¹ and ACA Connects – America’s Communications Association² (“the Associations”) hereby submit these comments in response to a proposal to amend a “program comment” issued by the Advisory Council on Historic Preservation (“ACHP”) in 2017 (“2017 PC”).³ Recognizing that telecommunications undertakings “typically [do] not result in adverse effects to historic properties,”⁴ the 2017 PC adopted a streamlined process for communications providers’ compliance with Section 106 of the National Historic Preservation Act (“NHPA”)⁵ for the installation of certain categories of wireline and wireless communications infrastructure on federal lands and property. At the

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 ACA Connects represents approximately 500 smaller private and public broadband, video, and voice providers that pass approximately 23 million households across the 50 states and U.S. territories, including six million homes in rural areas.

³ *Program Comment for Communications Projects on Federal Lands and Property*, ACHP (May 08, 2017), available at: [Program Comment for Communications Projects on Federal Lands and Property | Advisory Council on Historic Preservation \(achp.gov\)](https://www.achp.gov/Program-Comment-for-Communications-Projects-on-Federal-Lands-and-Property)

⁴ *Id.* at § I.

⁵ 54 U.S.C. § 306108.

request of the National Telecommunications and Information Administration (“NTIA”), ACHP now proposes to expand the applicability of the 2017 PC “from certain Property Managing Agencies (PMA) and Land Managing Agencies (LMA) to any federal agency providing funding, licenses, authorizations and approvals for projects that meet the PC’s terms.”⁶ For the reasons as set forth below, the Associations strongly support the proposed amendment to the 2017 PC to ensure that the flexibility it affords will apply beyond federal lands and properties to facilitate more efficient and balanced completion of critical Section 106 reviews for all federally funded broadband infrastructure projects. The Associations also encourage ACHP to conduct extensive outreach to Federal agencies, including field office staff, to promote use of the amended PC as widely as possible.

I. THE ACHP SHOULD ADOPT THE PROPOSED AMENDMENT TO THE 2017 PROGRAM COMMENT.

A. The proposed amendment will enable broadband providers to meet the broadband availability goals established by the Administration and Congress while protecting and preserving this Nation’s historic legacy.

As the ACHP is aware, the Administration and Congress have allocated unprecedented levels of funding to close this nation’s persistent broadband availability gaps and enable the many telework, telemedicine, and other benefits of a robust connection to accrue to millions of Americans that lack sufficient access today. Tens of billions of dollars for thousands of broadband infrastructure projects will soon be made available to broadband providers through the U.S. Department of Commerce’s Broadband Equity, Access, and Deployment (“BEAD”) program,⁷ with the explicit objective of leaving no American unserved; additional programs such

⁶ Proposed Amendment to Program Comment for Communications Projects on Federal Lands and Property, p. 2.

⁷ Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) (“IIJA”), § 60102.

as the U.S. Department of Agriculture’s ReConnect program,⁸ and the U.S. Department of Treasury’s Capital Projects Fund⁹ all play important parts in solving this puzzle as well. As the Nation has committed a historic level of funding to tackle persistent broadband availability gaps with highly aggressive timeframes (*i.e.*, by the end of the decade), the level of network construction necessary to meet these programs’ goals over the next several years will be unprecedented as well. This requires a renewed focus on how to ensure network construction can proceed as efficiently as possible while also balancing important historical preservation considerations under the NHPA.

As context, the Associations’ members typically operate in some of the most rural and remote reaches of the country where deployment barriers are substantial. Difficult terrain, weather shortened construction seasons, great distances, and low population density are among the many factors that contribute to higher per-household-passed network construction costs. These challenges, as well as supply chain and labor shortages, are likely to be more acute as the BEAD program begins its work in earnest. The challenges of completing environmental and historical preservation reviews are likely to be compounded going forward as well; even before the emergence of these new grant programs, these review processes have resulted in delays of a year or more before any construction can commence.¹⁰ Those federal and State agencies, offices, and entities with whom providers must interact to complete National Environmental

⁸ Consolidated Appropriations Act of 2018, H.R. 1625, 115th Congress (2018), § 779.

⁹ American Rescue Plan Act of 2021, H.R. 2617, 117th Congress (2022), § 604.

¹⁰ Communications and Technology Subcommittee Legislative Hearing: “Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment,” Statement by Michael Romano Executive Vice President NTCA–The Rural Broadband Association (Apr. 19, 2023), available at: <https://energycommerce.house.gov/events/communications-and-technology-subcommittee-legislative-hearing-breaking-barriers-streamlining-permitting-to-expedite-broadband-deployment>.

Policy Act (“NEPA”) and NHPA processes are already overtaxed and likely to be even more so as hundreds (or even thousands) of new projects and billions of dollars more for broadband deployment flood the marketplace in the next several years. Moreover, even as policymakers have become increasingly attuned to the challenges posed by the environmental review processes required under NEPA, the separate and independent historical preservation processes required pursuant to the NHPA are often overlooked in “streamlining” discussions. Yet, for many of the Associations’ members and especially in rural areas, historical preservation processes pursuant to NHPA are more often the source of substantial delays. Thus, ACHP’s attention to streamlining these processes where possible will be critical to the success of federal broadband funding initiatives – especially in the kinds of unserved and underserved areas that are the focus of grant programs like BEAD and far more likely to be rural or remote in nature.

The proposed amendment to the 2017 PC strikes an appropriate balance between seeking to address these concerns while still balancing important historical preservation objectives. The 2017 PC, and the amendment now being considered, retain the essential consultation that takes place between federal agencies and State Historic Preservation Officers (“SHPOs”) and Tribal Historic Preservation Offices (“THPOs”); yet, as member company feedback has indicated, the 2017 PC (and the amendment) have the effect of reducing the paperwork burdens and other time-consuming processes that have plagued navigation of Section 106 approvals. Moreover, the 2017 PC’s provisions reducing the area of potential effects for installing buried communications cable in a construction right-of-way (“ROW”) greatly reduces the time and effort involved with respect to surveying land surrounding the ROW for historic properties. In short, the streamlined processes of the 2017 PC strike an appropriate balance that will lead to more efficient reviews for broadband providers while protecting historic properties as Section 106 envisions, and their

extension through the amendment beyond federal lands and properties to all federally funded projects does nothing to disturb that effective balance.

B. Adoption of the proposed amendment to the 2017 PC should also include clarifications as to its applicability and scope to ensure the process is utilized as often as possible by agency staff.

In addition to adoption of the proposed amendment, ACHP can and should take additional steps to ensure that the amended 2017 PC will be utilized as widely as possible across federal agencies and staff, as well as State broadband offices. Member feedback indicates that many federal agency staff in field offices are unfamiliar with the 2017 PC, resulting in limited use of its streamlined procedures even as these would have saved those offices time and effort of their own. ACHP should therefore conduct outreach and education efforts regarding: (a) how to use the streamlined process; (b) the fact that it has been the subject of both ACHP review and public consultation; and (c) how it can enable agency staff to fulfill their Section 106 duties in a more efficient manner. In a similar manner, such outreach and education to State broadband office staff is important as well; where these offices may be expected to assist providers in completing Section 106 processes prior to federal agency review, ACHP should ensure they are fully briefed on the mechanics of the amended PC and the benefits that will result from its use for applying entities, for the offices themselves, and ultimately for those to be connected through the federally-funded deployments.

In conducting this outreach, ACHP should make clear to all stakeholders that the PC – both in its original form and as amended – is applicable in all respects to wireline broadband infrastructure, and more specifically that its application to wireline network elements (buried or aerial cable and fiber, etc.) is independent of the use of these facilities exclusively for wireless

backhaul.¹¹ Such clarification would be useful given that the 2017 PC is derived from the National Programmatic Agreement (“NPA”) for Federal Communications Commission (“FCC”) review of undertakings for the placement of communications facilities under Section 106 of the NHPA. The FCC’s review for communications facilities, however, is specific to towers, antennas, and related infrastructure relevant to the provision of spectrum-based wireless services. The goals of the proposed amendment would be severely undermined if it is mistakenly interpreted or understood as a mere extension of the FCC’s NPA and thus applicable only to streamline tower and antenna siting (or perhaps to buried fiber for the purposes of backhaul for wireless towers). This is of particular concern as the BEAD Notice of Funding Opportunity, based on the IIJA, prioritizes fiber-based broadband projects;¹² it would be an ironic turn indeed for streamlining measures to be adopted only for them to *not* apply to the majority of projects – and to no “priority” projects at all – funded by the very program that is prompting consideration of this amendment. Thus, ACHP should unequivocally confirm that the amended 2017 PC is applicable to wireline projects, including fiber-based broadband projects, and it should encourage agencies to make full use of the PC when conducting Section 106 reviews for such projects.

¹¹ See 2017 PC, §§ VIII (“Placement of Above-Ground Communications and Cable Lines on Existing Poles or Structures”), IX (“Installation of Buried Communications Cable on Federally Managed Lands”). The proposed amendments to the PC preserve both of these sections, with minor amendments to reflect the enlargement of the PC’s scope.

¹² National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, Notice of Funding Opportunity, BEAD Program (2022), p. 7.

II. CONCLUSION

For the reasons stated above, the Associations support the proposed amendment to the 2017 PC as an important step towards streamlining NHPA reviews in a balanced and thoughtful manner.

Respectfully submitted,

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