Before the
National Telecommunications and Information Administration
Washington, D.C. 20230

In the Matter of	)	
	)	
Infrastructure Investment and Jobs Act	)	Docket No. 230306-0064
Implementation	)	RIN 0660-XC05

COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION
AND
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association ("NTCA")[1] and the National Rural Electric Cooperative Association ("NRECA")[2] hereby submit these comments in response to the Notice/Request for Comment ("*Notice*")[3] published in the Federal Register by the National Telecommunications and Information Administration ("NTIA") on March 30, 2023 in the above-captioned proceeding. The *Notice* seeks comment on NTIA's proposal to "follow First Responder Network Authority's ("FirstNet Authority") National Environmental Policy Act ("NEPA") procedures on an interim basis with modifications…and establish 33 categorical exclusions ("CEs") in compliance with NEPA, the Council on Environmental Quality ("CEQ") regulations, and other related authorities."[4] As the Notice indicates, the proposed CEs would be

[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] NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives that provide electric energy to approximately 42 million people in 48 states. Rural electric cooperatives serve 92% of persistent poverty counties in the U.S. Over 200 NRECA members provide, or are working towards providing, commercial fixed broadband service today, deploying fiber-based, fixed wireless or combination fiber and fixed wireless networks.
[3] Notice of availability; request for comments, RIN 0660-XC05 (88 FR 19089, Mar. 30, 2023) ("*Notice*").
[4] *Id*. at 19089.

applicable to each of the NTIA broadband programs contained in the Infrastructure Investment and Jobs Act of 2021 ("IIJA").[5]

NTCA and NRECA support the proposed CEs and urge NTIA to move forward quickly with their adoption, subject to minor clarifications as discussed below. These would ensure that the CEs apply to wireline and wireless broadband network deployments in equal respects and avoid confusion as providers and agency staff work together to comply with NEPA and then move forward with important network construction that will fulfill the goals of the IIJA.

NTCA and NRECA propose herein as well steps that NTIA can take to streamline the consultation processes required by the National Historic Preservation Act ("NHPA"). NTCA and NRECA members have reported that compliance with these provisions can be expensive and time-consuming as well, and in some cases far more so than with NEPA. Steps to streamline the former would only make steps to streamline the latter that much more valuable; put another way, the benefits that should flow from streamlining NEPA processes may in some cases be mostly for naught if NHPA review results in a prolonged timeframe nonetheless.

II. THE INTERNET FOR ALL GOALS OF THE IIJA COULD BE SEVERELY UNDERMINED AT WORST, OR SUBSTANTIALLY DELAYED AT BEST, IF PROVIDERS ARE NOT ABLE TO COMPLETE ENVIRONMENTAL AND PRESERVATION REVIEWS IN AN EFFICIENT MANNER.

A. Environmental reviews, if not properly calibrated, could undermine the business case for operators of all kinds attempting to reach unserved/underserved areas.

NTCA and NRECA members look forward to the promise of the coming BEAD Program, as well as the other related programs found in the IIJA. These initiatives offer an opportunity to upgrade existing networks and extend into neighboring unserved areas. The

[5] Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) ("IIJA").

associations' collective members are community-based operators that have delivered broadband service via buried and aerial fiber networks in some of the nation's most difficult to serve rural areas, and they are eager to build upon this track record of success to reach additional unserved and underserved rural consumers leveraging BEAD resources (as well as other funding programs found in the IIJA).

As context for understanding the challenges that the associations' members face, these providers operate in some of the most remote, costly-to-serve rural areas of the nation, and typically face densities of fewer than 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% of members' customers having robust fiber connections. A recent NRECA survey found that 94% of its members offering broadband service are deploying fiber to the home and offering symmetrical speeds up to gigabit or higher.

But there is more work to be done to reach the remaining 20% of customers on average in these areas where better broadband is still needed, and to deliver better service in widespread rural areas that are far worse off (where other providers have failed to invest in upgrading networks at all or only in limited circumstances). This work 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. Protracted processes for obtaining such permits and approvals can confound progress toward reaching the unserved and underserved in a timely manner, however, and the costs associated with such permits and approvals can make a project uneconomic even with the support of federal funds, potentially deterring participation in

programs like BEAD. Indeed, operating in rural areas necessitates working efficiently with a sense of predictability, as the ability to obtain building supplies (such as fiber and related materials), find construction crews, and take advantage of months when these are available and the ground is thawed are all critical to making the business case for deploying. This will of course become more challenging as the BEAD, and other NTIA broadband programs, come online given a spike in demand for qualified personnel and a race for supplies in the face of ambitious buildout timeframes and constrained supply chains.

As NTIA works to fulfill the Internet for All mission of the IIJA, minimizing the many delays and potential for increased costs that come with the deployment and upgrade of broadband facilities must be seen as critical. As NTCA recently recounted in testimony before the United States House Committee on Energy and Commerce, Subcommittee on Communications and Technology,[6] 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. At the same hearing, NRECA noted that these same concerns exist as well. Members of both associations recount delays of up to nearly two years in obtaining necessary permissions for construction of such infrastructure, as the environmental, historic preservation, and consultation processes involved with NEPA and NHPA can be lengthy and arduous. Delays of this length may come to be unacceptable and doom a project – especially

[6] 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

with the BEAD program's ambitious four-year buildout timeframes, providers cannot afford to lose a quarter of that time just getting permission to start construction.

With this as background, NTCA and NRECA welcome the *Notice* and the proposed streamlining measures contained therein; if enacted, these will represent an important step in making BEAD and other mechanisms a success. That said, NTCA and NRECA offer below suggested clarifications necessary to avoid confusion as to the applicability of the proposed categorical exclusions, confusion that itself could result in delays and undermine the very streamlining efforts that NTIA is wisely attempting to undertake.

B. NTIA should adopt the proposed categorical exclusions found in the *Notice*, with minor clarifications as to their scope, to ensure that providers of all kinds can expeditiously reach un/unserved areas.

As noted above, NTCA and NRECA members have made incredible progress in terms of connecting their rural communities to fiber; yet the job is far from done, especially in areas where millions of rural Americans have not seen widespread investment in robust networks by their historical providers. NTCA and NRECA members therefore welcome the proposals made in the *Notice*, as they are a key to building out into new areas and finishing the job of upgrading existing networks as well. As a general matter, based upon decades of experience with communications networks and many years of experience with rural broadband technologies more specifically, the associations' members have found fiber installation to be the most effective and efficient means of providing a long-term solution for robust broadband connectivity. Even as wireless solutions are and will remain a "tool in the toolkit" for these operators to reach certain locations and areas on an interim basis, buried and aerial fiber (attached to utility-owned poles) will continue to be a primary focus of future network expansion, and this will include service to

end-users as well as fiber-based backhaul utilized by fixed and mobile wireless operators in rural areas.

NTCA and NRECA therefore support the focus of NTIA on permitting issues, and encourage the agency to move forward with the *Notice's* proposals – but with a minor clarification with respect to the scope and applicability of the proposed CEs out of an abundance of caution. The need for this caveat arises from the fact that the proposed CEs find their origin in the FirstNet Authority, an entity formed to establish and deploy a nationwide *wireless* broadband network specifically for first responders. The CEs were developed for the construction of a wireless network that most associate with towers/antennas and similar infrastructure. While wireline backhaul facilities are a critical component of such a network as well, the CEs are inarguably wireless focused. For example, while the *Notice* states that "the missions, geographic scopes, environmental settings, characteristics and technologies of proposed projects, and, more importantly, outcomes for the application of the FirstNet Authority implementing procedures *are expected to be similar* when used for the NTIA's expected programmatic activities and grant programs,"[7] they are certainly not the same. The use of buried or aerial fiber for point-to-point backhaul as part of a wireless network is very different from a wireline network that is comprised mostly of such facilities and intended to deliver connectivity to multiple points, including fiber to the home and small business. It is critical that the CEs expressly recognize and address this distinction to avoid any confusion as to intended scope.

Thus, NTCA and NRECA request that the CEs in final form explicitly and unequivocally contemplate the installation of wireline infrastructure (buried and aerial fiber among other

[7] *Notice* at 19091.

things) pursuant to the BEAD program (in addition to any wireless architecture that may be contemplated in the forms as ported from FirstNet). For example, the deployment of a wireline broadband network typically includes, among other things, both buried and aerial fiber optic cable, in a right-of-way or easement, network "aggregation points" (*i.e.*, splitters or other electronics) and associated physical equipment (including backup power facilities). While the reference to "switching stations, maintenance facilities, and other non-tower structures on previously disturbed ground"[8] in C-4 would appear on its face to apply to the types of transmission/electronics/aggregation points and other equipment that is part of a wireline network deployment (and again, with both buried and aerial fiber), clarification is needed as to that scope. C-8 and C-9 seem on their face to apply to aerial and buried fiber, yet caution necessitates a definitive clarification that this is intended to encompass the installation of such facilities with a wireline network and not only as part of an overall wireless deployment. NTCA and NRECA also urge NTIA to increase the threshold percentage of poles in C-8 from less than 20% to less than 30%. Again, the FirstNet CEs envisioned a type of network that relies on wireless last mile connections while the vast majority of BEAD awards are anticipated to be fiber to the premise deployments which necessitates attaching to more poles. The clarifications and adjustments to the CEs referenced herein would account for the increased need for fiber deployments to meet the goals of the BEAD program.

At the very least, the clarifications requested herein will avoid confusion-based delay. If those attempting to utilize the proposed CEs and those agency staff determining their applicability to a BEAD awardee's network deployment plans operate from the same

[8] *Id*. at 19093.

assumptions and understanding, the latter can quickly and efficiently determine whether a CE applies. Indeed, as the *Notice* states, "a CE does not eliminate environmental review of a proposed action but reduces paperwork and delay and allows an agency to efficiently focus its resources on proposed actions with the potential for significant environmental effects."[9] CEs clearly and properly calibrated for both wireline and wireless broadband networks in equal measure will have that exact benefit, as providers and agency staff would be able to limit back and forth discussion that could stem from uncertainty as to whether a proposed deployment project would fit within a CE. By contrast, absent such clarification, there is the potential – if not a substantial likelihood – that permitting agencies may deem a given CE as inapplicable to fiber deployment, notwithstanding the fact that such deployments are "priority broadband projects" under the BEAD program.

Finally, NTCA and NRECA note that as NTIA may issue updated NEPA procedures at the conclusion of the Council on Environmental Quality effort to update its NEPA regulations,[10] the former should be consistent in all respects with the interim CEs at issue herein. Should NTIA adopt updated CEs at some point in the future that deviate in any respect from those it adopts in the interim, providers would be caught up in a "changing the rules in the middle of the game" scenario that will itself produce delay and confusion that CEs are meant to combat.

[9] *Id*.

[10] *See Id*. at 19090 ("Presently, CEQ is undertaking a multiphase rulemaking process to review and revise the NEPA implementing regulations. CEQ has provided agencies additional time to propose updates to their NEPA procedures to be consistent with the CEQ regulations. Therefore, NTIA is proposing to establish new CEs and otherwise follow the existing implementing procedures of the FirstNet Authority, an independent authority within NTIA, in the interim while CEQ completes its rulemaking processes. Following the FirstNet Authority's procedures will facilitate the IIJA's large-scale investment in NTIA programs and the need for NTIA to fulfill the mandates of the IIJA in a timely manner, by ensuring NTIA make the most efficient use of time and available funding and resources to fulfill its environmental analysis and decision-making responsibilities.").

C. NTIA should also look to streamline processes required by the NHPA, as compliance with these can be long and arduous for broadband providers.

As noted above, NTCA and NRECA appreciate NTIA's advancement of CEs with respect to BEAD and other IIJA initiatives, as they are a critical part of ensuring that unnecessary delays do not stand in the way of any American's access to broadband service. That said, as NTIA is well aware, CEs under NEPA are inapplicable to the preservation and consultation processes required by Section 106 of the NHPA. It has been NTCA and NRECA members' experience that these NHPA processes can, in some cases, be the source of delays and in excess of those attributable to NEPA compliance – and NTIA should 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.

Fortunately, NTIA is not without a "tool in the toolkit" to address this issue as well. Specifically, adoption of a National Programmatic Agreement ("NPA") could, if developed in consultation with, and approval of, all relevant preservation officials, achieve a similar streamlining effect as the NEPA CEs while also ensuring that critically important historic and Tribal lands and artifacts are respected as the law intended. NPAs adopted by NTIA can effectuate a more streamlined process for BEAD and other program awardees to satisfy their historic and Tribal preservation requirements with minimum or no consultation with State Historic Preservation Officers and Tribal officials, based on the type of activity that is being undertaken. Of course, for reasons similar to those articulated above, any NPA adopted for the BEAD and other NTIA programs should mirror in all respects the types of broadband

deployment activities (for wireline and wireless operations) as referenced above.[11] In the end, if NTIA helps to address NEPA and NHPA alike, and if it then works with states and localities through review of initial proposals to facilitate streamlining of approval processes under their respective purviews, this sort of comprehensive multi-jurisdictional approach should be able to make a material difference in ensuring that the promise of BEAD is realized within the ambitious timeframes contemplated by Congress.

III. CONCLUSION

For the reasons set forth above, NTIA should:

- clarify that the CEs apply to wireline and wireless broadband network deployments in equal respects; and
- take steps to streamline the consultation processes required by the NHPA.

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[11] In the alternative, NTIA could work with provider awardees to determine if NHPA processes are indeed required for a particular project and prior to the awardee initiating the consultation processes.