

**Before the
Council on Environmental Quality
Washington, DC**

Update to the Regulations Implementing) CEQ-2019-0003
the Procedural Provisions for the National)
Environmental Policy Act)

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

I. INTRODUCTION & SUMMARY/STATEMENT OF INTEREST

NTCA-The Rural Broadband Association (“NTCA”) hereby submits these comments in the above-captioned Council on Environmental Quality (“CEQ”) proceeding. CEQ seeks comment on a much-needed update to the procedural provisions governing federal agency implementation of the National Environmental Policy Act (“NEPA”).¹ As discussed herein, amendments to CEQ’s NEPA regulations are necessary to ensure that NTCA members and other similarly situated small broadband providers are able to efficiently, and without unnecessary delay or cost, deploy and upgrade the facilities necessary to ensure their subscribers have access to high-quality, next-generation communications services.

As background, NTCA represents approximately 850 small, rural telecommunications providers providing service in 45 states. All of NTCA’s members are full service voice and broadband providers, serving approximately five percent of the population of the United States but approximately 40 percent of its landmass. These companies operate in rural areas long ago left behind by larger service providers because the markets were too high-cost-to-serve, too sparsely populated, too far from larger towns and cities, and/or too challenging to serve in terms of topography, terrain, and lack of subscriber density. These areas offer little, if any,

¹ Council on Environmental Quality, Notice of Proposed Rulemaking, CEQ-2019-0003, 85 Fed. Reg. 1684 (rel. Jan. 10, 2020) (“NPRM”).

“business case” to deploy and operate advanced communications networks absent the help of federal and state initiatives intended to promote rural infrastructure investment and sustain operations thereafter. As anchors (and residents) in the areas they serve, these small rural businesses create jobs, drive economic activity, and connect rural Americans to the world. These providers have been at the forefront of the broadband and Internet Protocol evolution for years, making every effort to innovate and deploy advanced networks that respond to consumer and business demands for the cutting-edge services that urban consumers take for granted.

In addition to the challenges of difficult topography and low population densities, NTCA members also face substantial barriers when seeking to obtain access to federal lands or otherwise undergoing federally mandated environmental reviews for the purposes of installing broadband communications facilities – and these barriers typically far exceed those that arise on the state and local level. These delays are more than simply frustrating for these operators – because these delays are often caused by a “byzantine” permitting and environmental review process, these small businesses are often forced to seek outside counsel, driving up their costs and diverting limited resources better spent on serving subscribers. Moreover, as discussed below, these providers often touch federal land for only a small portion of an overall project, yet the confusing and unharmonized processes from agency to agency or even with individual agencies can cause substantial delays. In many cases, delays caused by the inability to receive permits in a timely manner can often put off construction for months as crews sit for entire winter seasons awaiting frozen ground to thaw. In the end, the increased costs of navigating this process diverts limited resources that would be better spent on actually serving consumers, and in the case of unnecessary delays, consumers fortunate enough to have access to fiber-to-the-

home based broadband services they never have enjoyed, but will because of the rural operator's commitment to serve, are forced to wait.

Simple amendments to the NEPA review process as directed by CEQ can streamline smaller providers' access to federal lands while ensuring that agencies' statutory mandates to protect the environment are met. As discussed below, a government-wide categorical exclusion for the installation of broadband communications facilities on federal lands already disturbed by projects that have previously undergone NEPA review can assist these small providers without having a "significant effect" on the environment. CEQ can further streamline the process for small providers by ensuring that existing efforts to expedite the federal permitting process do not favor larger entities and inadvertently add to the delays smaller providers face. Finally, consistent processes across and within individual federal agencies can reduce confusion and time spent by these small businesses, and enable them to focus their time and resources on serving rural consumers.

The owner, managers, directors, and employees of NTCA members are also residents of the rural areas they serve, and they live near and often visit the federal lands on which they seek to install broadband communications facilities. They consider themselves stewards of rural America and that includes protection of the environment. They can accomplish both improved broadband service (and thereby improved rural economies) as well as protection of the environment with the simple steps proposed herein.

II. CEQ SHOULD ADOPT A GOVERNMENT-WIDE CATEGORICAL EXCLUSION FOR THE INSTALLATION OF BROADBAND FACILITIES IN RIGHTS-OF-WAY ON OR NEAR PREVIOUSLY DISTURBED FEDERAL LANDS.

As noted above, NTCA members report that delays in obtaining permits for the purposes of installing broadband communications facilities on federal lands far exceed those experienced at the state or local level. To make matters worse, NTCA members frequently experience delayed access to rights-of-way (“RoWs”) that are previously disturbed by earlier projects that have been given NEPA approval – as an example, NTCA members have reported significant delays in obtaining approval to install broadband communications facilities in RoWs abutting recently completed, federally funded highway projects. Other examples abound, such as the NTCA member that experienced a significant delay for the installation of fiber broadband facilities abutting railroad tracks that underwent recent maintenance (including the replacement of railroad ties mere feet from the buried fiber-optic cable eventually installed by the broadband provider). That these larger and more disruptive projects have already successfully navigated the NEPA process and have been granted approval has apparently not factored into the broadband providers’ permit applications.

CEQ should therefore adopt an agency-wide “categorical exclusion” from NEPA for the installation of broadband communications facilities when such installation is in or near lands that have been previously disturbed pursuant to a finalized environmental assessment or environmental impact statement. The scenarios referenced above – the installation of broadband communications facilities in RoWs abutting a recently completed highway or a railroad project – are just examples of actions that do “not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an

environmental impact statement is normally required.”² The broadband infrastructure projects at issue and for which NTCA seeks a categorical exclusion are in areas that have already been subject to the NEPA review process for what are often much larger projects, and thus the lead agency has already determined that the larger project can go forward without “significant effect” on the environment. A categorical exclusion from NEPA for such projects will not harm the environment but will reduce unnecessary delays faced by broadband providers.

III. CEQ SHOULD ENSURE THAT AGENCIES’ EFFORTS TO STREAMLINE THE NEPA REVIEW PROCESS DO NOT OVERLOOK SMALL ENTITIES’ PERMIT APPLICATIONS.

CEQ should create, and require all federal agencies to follow, a streamlined process specific to small broadband providers’ environmental reviews. As noted below, while both the President and Congress have taken admirable steps to streamline the Federal environmental review and permitting process for infrastructure projects, smaller providers’ broadband investments often do not meet the threshold for triggering such streamlined treatment. Thus, the very small businesses operating in difficult-to-serve rural areas often desperately in need of broadband infrastructure investment may see their applications “pushed to the back of the line” as agencies’ limited resources are focused on larger projects.

As the NPRM states, Congress in 2015 adopted the FAST Act to streamline the environmental review and permitting process for “covered projects.”³ “Covered projects” are defined as those “expected to *exceed \$200 million*, and involve the construction of infrastructure for certain energy production, electricity transmission, water resource projects, broadband,

² 36 CFR § 907.10.

³ NPRM, 85 Fed. Reg. 1689. *See also* 42 U.S. Code § 4370m (6).

pipelines, manufacturing, and other sectors.”⁴ In addition, in August 2017, President Donald Trump issued Executive Order 13807 to “ensure that the Federal environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent.”⁵ The resulting “One Federal Decision” (“OFD”) process applies to “a major infrastructure project” defined as one “for which *multiple Federal authorizations* will be required to proceed with construction [and] the lead Federal agency has determined that it will prepare an EIS under NEPA.”⁶ While the OFD process does not have a funds threshold similar to that contained in the FAST Act, both processes are similar in that they offer little hope or help to NTCA members and other entities most committed to deploying broadband infrastructure in rural areas. For one, small businesses like those in NTCA’s membership are highly unlikely to invest \$200 million in a single project. Moreover, as noted above, NTCA members’ projects typically only touch federal land for a very small portion of an overall project and even if multiple agencies are involved, they are unlikely to qualify as “major infrastructure projects.” These smaller providers are therefore on the outside looking in with respect to streamlined processes that benefit larger operators, yielding the ironic result that smaller projects undertaken by small businesses become more costly and time-consuming to navigate than much larger undertakings.

Thus, CEQ should create – and require all agencies and sub agencies and field offices to utilize – a review process exclusively applicable to broadband projects not expected to exceed

⁴ NPRM, 85 Fed. Ref. 1689

⁵ *Presidential Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure*, Exec. Order No. 13807, 82 Fed. Reg. 4063 (Aug. 15, 2017), available at <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-establishing-discipline-accountability-environmental-review-permitting-process-infrastructure/>.

⁶ *One Federal Decision - Fact Sheet*, United States Department of Transportation, (emphasis added), available at: <https://www.transportation.gov/sites/dot.gov/files/docs/policy-initiatives/320411/ofd-fact-sheet.pdf>.

\$25 million. Many of these projects will likely only touch federal land for a small portion of the overall project, and in any case, nearly all will be sponsored by rural broadband providers that, as small businesses, lack the in-house resources to navigate byzantine processes and cannot afford unnecessary delays in areas of the country where numerous challenges exist for operating a communications network. Most importantly, because agency resources are, due to the FAST Act and the OFD process, likely to be focused on larger entities and their much larger infrastructure projects, these smaller entities' efforts to improve their communities will be severely disadvantaged if a process exclusive to them is not adopted. This disadvantage to such rural areas cannot be what Congress or the President intended, and a separate review process would ensure that those parties with limited resources are able to navigate successfully the environmental review processes required by NEPA.

IV. CEQ SHOULD ADOPT RECOMMENDATIONS MADE BY THE FEDERAL COMMUNICATIONS COMMISSION'S BROADBAND DEPLOYMENT ADVISORY COMMITTEE STREAMLINING FEDERAL SITING WORKING GROUP.

As part of its commitment to streamlining the process of seeking access to federal lands for the purposes of installing broadband communications facilities, NTCA's Chief Executive Officer served as a member of the Federal Communications Commission's Broadband Deployment Advisory Committee ("BDAC") Streamlining Federal Siting Working Group ("Federal Siting WG"). That working group made several recommendations⁷ to remove the barriers that broadband providers typically face with respect to deployment on federal lands. Those recommendations were made to "ensure that next-generation wireline and wireless

⁷ Broadband Deployment Advisory Committee ("BDAC"), Streamlining Federal Siting Working Group Final Report, Jan. 23-24, 2018 ("Federal Siting WG"), available at: <https://www.fcc.gov/sites/default/files/bdac-federalsiting-01232018.pdf>.

broadband infrastructure can be brought to millions of American consumers in a more expeditious manner while also respecting federal agencies’ statutory duties as stewards of federal land.”⁸

As the Federal Siting WG report found, “unpredictable processes across agencies” serve as a significant barrier to broadband providers navigating the federal permitting process. NTCA members can confirm that this is a top barrier they face, and specifically they frequently report permitting processes that differ from agency to agency, and indeed differ from one office to another within a single agency. (For example, the process can vary from one Bureau of Land Management office to another even within a single state.) As small businesses, NTCA members are particularly troubled by this problem: NTCA members employ on average fewer than 30 staff, and the process of navigating an application process only to find that a different process exists for another agency or office of the same agency wastes providers’ limited resources. Of course, agency staff working with providers are affected as well, as their time is wasted answering questions about process rather than reviewing permitting applications. CEQ should create, and require all federal agencies and sub agencies (as well as field offices) to adopt, consistent and clear and uniform permitting processes for the purposes of installing broadband communications facilities on federal lands.

CEQ should also adopt the Federal Siting WG recommendation that “[e]ach federal agency...designate a state contact that covers each state to ensure consistency across field offices, forests, and national parks.”⁹ NTCA members often report that finding a point of contact

⁸ *Id.*, p. 4.

⁹ *Id.*, p. 15.

for the purposes of asking simple questions – and on issues that could ensure applications are properly submitted with the correct documentation – can oftentimes be difficult if not impossible. In addition, requiring that “each federal agency...have a specific page on its website for all ‘dedicated points of contact’”¹⁰ would ensure that providers are able to access this information in a timely manner.

Finally, CEQ should pursue a “single online permitting application tracking mechanism.”¹¹ Broadband providers and agencies should have a simple way to track the progress and status of an application request, and an online tracking mechanism would ensure that applications stay on track with respect to meeting required timelines. Most importantly, this could also “serve as a useful tool to communicate about application progress and status,”¹² saving parties on both sides time and effort required to communicate via another method.

V. CONCLUSION

For the reasons discussed above, CEQ should:

- adopt a government-wide categorical exclusion for the installation of broadband facilities in rights-of-way on or near previously disturbed federal lands;
- ensure that agencies’ efforts to streamline the NEPA review process do not overlook small entities’ permit applications; and
- adopt recommendations made by the Federal Communications Commission’s Broadband Deployment Advisory Committee Streamlining Federal Siting Working Group.

¹⁰ *Id.*

¹¹ *Id.*, p. 16.

¹² *Id.*

Respectfully submitted,



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March 10, 2020