

**Before the
RURAL UTILITIES SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE**

In re:)	
)	RUS-14-Telecom-0008
ENVIRONMENTAL REVIEW)	
OF TELECOMMUNICATIONS)	Federal Register Notice
PROGRAM PROJECTS)	79 FR 70847

**COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION
and
UNITED STATES TELECOM ASSOCIATION**

To the Rural Utilities Service:

I. INTRODUCTION

NTCA–The Rural Broadband Association and United States Telecom Association (USTelecom) (collectively, the Associations) hereby submit comments on the Request for Public Comment of the Rural Utilities Service (RUS) on Environmental Review of Telecommunications Projects (RPC).¹ NTCA represents nearly 900 small, rate-of-return rural telecommunications providers (commonly called RLECs). USTelecom is a trade association representing service providers and suppliers for the telecom industry; its diverse member base ranges from large publicly traded communications corporations to RLECs.

RLECs serve less than five percent (5%) of the U.S. population but roughly 40 percent (40%) of its landmass. These companies operate in areas long ago left behind by larger providers because the markets were too high-cost – too sparsely populated, too far from larger towns and

¹ Department of Agriculture, Rural Utilities Service: Environmental Review of Telecommunications Program Projects, 79 FR 70847 (2014).

cities, and/or too challenging to serve in terms of topography or terrain. As anchors in the communities in which they live and serve, these small businesses create jobs, drive the economy, and connect rural Americans to the world. Moreover, these rural network operators have been at the forefront of the broadband and Internet Protocol (IP) evolution for years, executing innovative efforts to deploy advanced networks that respond to consumer and business demands for cutting-edge services while extracting greater efficiencies from network operations in the face of operating in hard-to-serve areas. RLEC members of the Associations serve large areas that often traverse Federal, state and Tribal lands, and many are participants in RUS telecommunications programs, such as the Telecommunications Infrastructure Loan Program, the Farm Bill Broadband Loan Program, the Community Connect Grant Program and the Distance Learning and Telemedicine Program. Accordingly, many RLEC members of the Associations have substantive experience in the creation of Environmental Assessments (EAs), and are therefore can comment effectively on the issues noticed in the RPC.

In summary, the Associations urge the RUS to consolidate its internal processes in order to achieve a single form of EA process across all RUS programs. Additionally, the Associations urge the RUS to coordinate its efforts with other Federal agencies in order to reduce potential duplication and increase efficiency where multiple authorities are involved. Finally, the Associations urge the RUS to work with other Federal bodies to address and mitigate circumstances in which inconsistencies between Federal, state and/or local practices may have the effect of delaying or otherwise frustrating the review of EAs and permitting processes.

II. DISCUSSION

The RUS Telecommunications Program administers several initiatives intended to build and expand broadband networks in rural America. Pursuant to the National Environmental

Policy Act (NEPA),² RUS, as all other Federal agencies, must examine the potential impacts of its administrative actions.³ In these comments, the Associations suggest ways by which the RUS can ensure that the EA mandates are fulfilled in an administratively efficient, economical and logical manner. The Associations will also describe generally the experiences of their members navigating the EA process, and makes themselves available to produce more detailed accounts of the overview descriptions offered herein.

NEPA was enacted in 1970 and articulates the Nation’s environmental policies. The statute includes among its purposes, “to promote efforts which will prevent or eliminate damage to the environment and biosphere”⁴ The procedural requirements of NEPA apply to Federal agency actions, including financing or otherwise assisting or approving projects, agency rulemakings, and agency plans, policies or procedures that implicate environmental impacts.⁵ Within NEPA, the term “environmental” can refer to impacts on flora or fauna, other natural resources, historic properties, or even cultural qualities.⁶ Three Federal offices have specialized

² National Environmental Policy Act of 1969, PL 91-190, 83 Stat. 852 (1969) (codified at 42 USC § 4321 *et seq.*)

³ 42 USC § 4332(2).

⁴ 42 USC § 4321.

⁵ 42 USC § 4322(C).

⁶ *See, e.g.*, 42 USC § 4331(b)(2), (b4); 42 USC § 4332(1)(A).

An agency’s evaluation of cultural impact can be considerably comprehensive. In a proceeding to evaluate the siting of a 60-foot monopole,

. . . a few commenters suggested the increased use of cell phones in the community . . . such as at communal meeting places such as the library and other places, would negatively impact traditional interpersonal communications or other social traditions enjoyed within the community.

See, United States Department of the Interior, Bureau of Land Management: Finding of No Significant Impact and Decision Record, Commnet Embudo Wireless Communications Tower Project, DOI-BLM-NM-F020-2013-0030-EA, at 4 (Oct. 2013) (available at http://www.blm.gov/style/medialib/blm/nm/field_offices/taos/taos_planning/docs.Par.74761.File.dat/Embudo%20Commnet%20Tower%20FONSI%20DR%20with%20EA_10.13.pdf) (last viewed Jan. 15, 2015, 10:20).

oversight of NEPA: the Council on Environmental Quality (CEQ), which is housed within the Executive Office of the President and is charged with ensuring that Federal agencies comply with the act;⁷ the Environmental Protection Agency (EPA), which is charged with reviewing environmental impact statements (EIS) and some EAs issued by Federal agencies;⁸ and, the U.S. Institute for Environmental Conflict Resolution, which resolves environmental conflicts between Federal agencies.⁹

The diffusion of NEPA implementation is spread even more broadly by the fact that each implementing agency develops its NEPA process. So, while the CEQ sets minimum requirements for agencies,

CEQ regulations also call[] for agencies to create their own implementing procedures that supplement the minimum requirements based on each agency's specific mandates, obligations, and missions. These agency-specific NEPA procedures account for the slight differences in agencies' NEPA processes.¹⁰

Accordingly, parties undertaking an EA that implicates the respective jurisdiction of multiple agencies may be required to conform their proposal to varying standards. The statute contemplates this outcome, requiring that,

[p]rior to making any detailed statement, the responsible Federal agency shall consult with and obtain the comments of any Federal agency which has

The BLM found that the community was not “devoid or isolated from technological advances or wireless communications,” and concluded “the potential impact to the social fabric of the community from the proposed action would a subtle, unquantifiable element if even discernible.” *Id.*

⁷ *See*, 42 USC § 4342.

⁸ Clean Air Act, P.L. 88-206, 77 Stat. 392 (1963), codified at 42 USC § 7609.

⁹ Environmental Policy and Conflict Resolution Act of 1998, P.L. 105-156 (1998), codified at 20 USC §§ 5601-5609.

¹⁰ *A Citizen's Guide to the NEPA: Having Your Voice Heard*, Executive Office of the President of the United States, at 6 (2007) (available at http://www.blm.gov/pgdata/etc/medialib/blm/nm/programs/planning/planning_docs.Par.53208.File.dat/A_Citizens_Guide_to_NEPA.pdf) (last viewed Jan. 14, 2015, 16:55).

jurisdiction by law or special expertise with respect to any environmental impact involved.¹¹

The multi-layered processes, often among multiple parties, have led to a perception that the matter of creating, submitting, and reviewing an EA is burdened by discouraging inefficiencies.¹²

The RPC, however, indicates that the process can become even more diffused within a single agency: by the RUS's own admission, "each [telecommunications] program's application process and resulting environmental review process is administered differently." This approach potentially requires applicants to create different proposals for a single project, or at the least bars the opportunity for applicants to master a single procedure for all agency applications. The result is a potentially needless expenditure of administrative resources on the part of both applicants and the agency. Therefore, the Associations urge the RUS to unify each of its program processes in a standard EA format. The RPC explains, "[t]he agency seeks to synchronize future environmental review compliance processes for all Telecommunications Programs and develop a more efficient and effective environmental review process commensurate to the potential

¹¹ 42 USC § 4332(c).

¹² The process has been the subject of humorous political commentary. Sen. Angus King (I-ME) offered the following observation in November 2013:

The Lord came to Moses, and He said, "Moses, I have good news and bad news."

Moses said, "Lord, please give me the good news."

And the Lord said, "Moses, I am going to empower you to part the waters of the Red Sea, and allow my people to escape, and after they do, the sea is going to come back and engulf the armies of the Pharaoh."

Moses said, "Lord, that's wonderful news. But, what's the bad news?"

God said, "You have to prepare the environmental impact statement."

Remarks of Sen. Angus King, Infrastructure Now: Reforming America's Broken Infrastructure Approval Process (Nov. 21, 2013) (video available at <https://www.youtube.com/watch?v=FRYFipAz9bQ>) (last viewed Jan. 15, 2015, 9:56).

environmental impacts of the Telecommunications Programs projects.”¹³ The Associations support this goal, and in the following paragraphs will address the specific questions posed by the RUS. The responses below are based upon interviews conducted by the Associations with rural communications providers.

A. WHAT ARE YOUR GREATEST CHALLENGES IN COMPLETING ENVIRONMENTAL REVIEWS, INCLUDING NEPA, NHPA, AND ESA FOR BOTH WIRED AND WIRELESS TECHNOLOGIES?

The greatest challenges in completing environmental reviews, including those implicating NEPA, the National Historic Preservation Act (NHPA),¹⁴ and Environmental Site Assessments (ESAs) are financial, administrative, and potential opportunity costs. The process of creating an EA is multi-layered, and a single EA may contemplate specialized knowledge across several disciplines including science, history and technology. For example, applicants must address the impact of a proposal on natural resources; or, historic artifacts or conditions; or, social impacts relating to the potential impact on the community. These knowledge bases are not always resident among staff of a rural communications provider, and applicants are therefore compelled to contract with outside expert firms to address these administrative requirements.

The matter of crafting an EA seems to have grown beyond expectations articulated by the CEQ. In 1981, the CEQ issued guidance that “10-15 pages is general appropriate for EAs;”¹⁵ it is not uncommon, however, for EAs to surpass that length. In addition to fees paid to outside experts, applicants must also devote internal staff to manage the creation of the EA. However, since each Federal agency is authorized to implement different EA processes (and, in the case of

¹³ 79 FR 70848.

¹⁴ National Historic Preservation Act of 1966, P.L. 89-665, 80 Stat. 915 (1966), codified at 16 USC § 470.

¹⁵ See, CEQ, “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations,” at 27 (Mar. 16, 1981) (available at <http://energy.gov/sites/prod/files/G-CEQ-40Questions.pdf>) (last viewed Jan. 15, 2015, 11:32).

the RUS, even a single agency may employ multiple standards for different programs), the task of managing an EA (and its consequent costs) can vary wildly since no universally applicable *pro forma* approach is accessible. The Associations acknowledge that each set of natural, historic, and cultural resources will present unique considerations, and recognizes that the various interests of agencies such as the Federal Energy Regulatory Commission (FERC), the Federal Communications Commission (FCC), or others results in a different path for each agency. Nevertheless, the lack of a uniform framework leads to perpetual potential for inefficiency marked by a trail of spent resources when adequate coordination among Federal offices (and relevant state or local offices, where relevant) cannot be obtained.

The costs are not limited to paid invoices or staff time-in: opportunity costs abound, as well, since significant delays in the completion of an EA review, particularly in regions where network construction seasons are defined by ordinary climatic patterns, can defer network development projects by months or years. In an environment where National policy promotes the vigorous deployment of advanced networks across the country, practices that facilitate delay should be reevaluated.

Additionally, the costs and timing of an EA creation and review can include factors beyond the control of the applicant. Information within the hands of government agencies or third parties may be requisite components of an EA; and, yet, applicants are subject to the availability and cooperation of those who hold the information. For example, members of the Associations relate that when deploying facilities in Western lands, few projects involve *only* Federal land management agencies such as the Bureau of Land Management (BLM) or Forest Service. Rather, a typical project contemplated by a rural provider serving sparsely populated areas will also cross state lands. State land departments, however, may often be understaffed and

underfunded, and therefore ill-positioned to provide the support necessary to drive the efficient implementation of an EA process. Members of the Associations report that delays of two years to obtain a permit (which could affect an EA) are not atypical. As noted above, that sort of delay, coupled with construction seasons that must accommodate early and harsh winters, can create vast opportunity costs. The lack of a “shot clock” or other mandatory period in which interested parties must attend their role in the EA process enables some matters to extend *in infinitum*. Troubling, too, is the fact that in some instances, applicants are accorded little visibility into the process; applicants lack information about the manner and timing of review procedures. While certain remedies may not be prescribed by legislative statements, neither are they proscribed by statutory directive. Therefore, where appropriate, the implementation of both positive and negative incentives may be considered as mechanisms to increase efficiency.

EA applicants also report instances in which geographic or historic surveys must be conducted for areas for which an EA was already approved. By way of example, it is difficult to discern the need to conduct an archeological survey more than once for the same area; the absence of historical objects at the time of the first EA would tend to support the proposition that historical objects would not be found in a subsequent investigation at the same site.

Regarding RUS processes specifically, the Associations suggest that the RUS permit the formulation of the EA to proceed concurrent with its corresponding loan or grant application, enabling applicants to thereby amend as necessary either the project parameters or the boundaries of the EA as new information becomes available. As applicants (and engineers) get closer to breaking ground on a project, they develop and obtain a more refined understanding of exactly how the development footprint will imprint. As such, EAs that are completed later in the process, on a parallel track with the application, will have a tendency to be more precisely

focused on the areas that will be affected. Therefore, the completed EA should be a requisite to final *authorization* of funding, but should not be a prerequisite to *application* for funding.

Permitting the EA and the application to proceed in tandem enables efficiency and can reduce both financial and administrative costs.

B. FOR PROJECTS REQUIRING THE USE OF FEDERAL LAND, WHAT ARE THE GREATEST CHALLENGES IN OBTAINING THE NECESSARY LAND USE AUTHORIZATIONS OR PERMITS?

Projects requiring the use of Federal lands implicate unique challenges. Those proposals include not only the general effort of preparing an EA, but also managing an additional Federal agency drawn into the process.

Projects involving Tribal Land may also implicate unique challenges. “Reservation Land” is more accurately defined as Trust Land, which is owned by the Tribe but held in trust by the Bureau of Indian Affairs (BIA). Accordingly, permits must be obtained from both the BIA and the Tribal authority. The BIA is a large organization comprising many layers of internal functions, and it is the impression of some members of the Associations that the BIA’s ability to respond lithely to application and permit requests is not evident on a consistent basis; reports of multi-year application processes have been offered.

It is reported, as well, that the BIA reflects the respective positions of individual Tribal Nations, which as sovereign nations may each have a distinct protocol. The result is that even within the BIA, different approaches for seemingly similar applications may accrue. The Associations recommend that the BIA work with Tribal nations to disseminate standard practices and procedures that would be available to applicants. Therefore, applicants whose projects require an EA for Tribal land would be apprised of that Tribe’s process prior to embarking upon the application, and would be able to address in a preemptive and cooperative manner any issues

of concern or questions that might be expected to arise. Both RUS field and National staff could play an important role in this regard by facilitating the exchange of relevant information that would be useful to all parties, thereby adding supplemental constructive assistance to the process. Coordination could also be extended to commonly-accepted timelines for completion in order to ensure that all parties can work in concert to complete necessary EAs.

C. WHAT DO YOU BELIEVE IS A REASONABLE LENGTH OF TIME FOR RUS TO CONSIDER A COMPLETED LOAN APPLICATION, INCLUDING ENVIRONMENTAL REVIEWS AND COMPLIANCE, BEFORE MAKING A DECISION TO FUND A PROJECT?

The Associations propose that when a loan application, EA, and compliance filings are complete, 60-90 (sixty-to-ninety) days is a reasonable length of time for RUS to issue a decision to fund a project. At the time an application and its supporting documentation are completed and submitted, the final task is review of the filing to ensure that the required components have been included and addressed sufficiently. A 60-90 (sixty-to-ninety) day review period should permit RUS staff sufficient time to review, including distribution of the application among various subject matter experts that may exist within the agency and who might be charged individually with reviewing particular aspects of the application. The 60-90 (sixty-to-ninety) day proposal also accommodates the interests of applicants, and their need to know when they can set in motion staffing, ordering, construction, and other needs associated with an imminent construction project.

D. WHAT SHOULD RUS DO TO EXPEDITE THE COMPLETION OF ENVIRONMENTAL REVIEWS AND COMPLIANCE DURING THE REVIEW OF PROJECT APPLICATIONS, PARTICULARLY FOR PROJECTS THAT CROSS LAND WITH MULTIPLE OWNERSHIP, I.E., PRIVATE, FEDERAL, STATE, OR TRIBAL LANDS?

Reviews of project applications for projects that cross land with multiple ownership or other jurisdictional oversight are ripe for delay in the absence of any defined method of

coordination. Specifically: if responsibility and authority are diffused broadly enough across multiple agencies, no single entity can be held accountable to achieve desired outcomes. The allocation of responsibility among different entities for a single project can result in all agencies disclaiming responsibility for delay, citing either the actions or inactions of another, or the difficulty of coordinating among each other in a timely manner.

RUS review of applications that contemplate the participation of multiple jurisdictions could be expedited by the common implementation of a uniform system of review among the multiple agencies. Certainly, one agency will necessarily be cast in the role of leader to recruit support among the various jurisdictions. However, a common set of practices and principles, outlined for programmatic RUS coordination with various agencies with which it may cross-paths during an EA process, would give both Federal (and local) staff and applicants a determined path and schedule for application review. Agreements regarding the timing and assignments of responsibilities could be formed. For example, agencies could agree that applications reviewed in common would be subject to established, coordinated deadlines for completion, such that no agency's effort would be delayed or hindered by the actions or inactions of another; this would also assure that applicants can communicate effectively with agencies when inquiring about their applications. Or, agencies whose respective reviews may contemplate same issues could agree to presumptive acceptance of a peer agency's conclusions in order to eliminate duplicative reviews.

Timing aside, the RUS may also consider whether symmetry among RUS and FCC standards would be beneficial, and increase the efficiency of preparing and reviewing applications. This may be of particular use, for example, during a tower siting review that may require the submission of an EA to the FCC.

Finally, the Associations suggest the RUS to consider a “fast-track” application process for areas in which an EA has already been executed and approved, even where such execution and approval was conducted on behalf of another applicant. In such instances, assessments that would “cover the same ground” would be permitted to rely upon previous findings where circumstances have not changed.

E. WHAT ADDITIONAL GUIDANCE DO YOU WANT FROM RUS FIELD PERSONNEL TO ASSIST YOU IN COMPLETING THE NECESSARY REQUIREMENTS FOR A LOAN OR GRANT APPLICATION, INCLUDING ENVIRONMENTAL REVIEWS AND FEDERAL LAND USE PERMITS IF THEY ARE NEEDED?

The vast network of RUS field offices is fertile ground for the dissemination of developed local expertise. Local Federal agents are positioned well to understand specific, relevant issues while being equally fluent with overarching agency practices. Therefore, RUS field agents are poised to be a key resource to assist EA applicants in the development and filing of assessments. RUS field staff would provide guidance regarding the agency rules and practices, coupled with local understanding and familiarity with both local interested parties, other Federal agencies, and state interests. RUS field offices could also be effective liaisons once the application is submitted in order to take an active role where necessary to expedite external reviews; inasmuch as the RUS interest in, for example, deploying broadband is at stake, RUS agents are logical advocates for the facilitation of favorable results. These efforts could be aided by active outreach by RUS field staff to local or other government interests.

F. WHAT ENVIRONMENTAL PROTECTION MEASURES AND/OR DESIGN AND CONSTRUCTION STANDARD OPERATING PROCEDURES FOR ENVIRONMENTAL PROTECTION HAVE YOU FOUND TO BE MOST EFFICIENT AND COST-EFFECTIVE?

Members of the Associations work closely with engineering firms that are sensitive to the environmental protection measures and/or design and construction standard operating

procedures for environmental protection. The Associations appreciate concerns to minimize unnecessary disturbance of natural, historic or cultural resources, and accordingly have executed creative solutions to address unique needs. For example, certain members of the Associations have determined that aerial fiber deployments may have the least environmental impact among various options. The matter of determining, however, which environmental protection measures and/or design and construction standard operating procedures are most effective depend largely on the specific circumstance and location of a particular project.

III. CONCLUSION

The Associations submit that the efficiency of the EA process at the RUS would be improved if a single model was utilized in each the RUS telecommunications programs. More broadly, the efficiency of the EA process would enhanced if Federal agencies, including RUS, would coordinate more regularly with each other and relevant local interests. In these regards, RUS field staff can play a critically beneficial role by leveraging local knowledge and relationships to facilitate the exchange of information among parties. Finally, where appropriate, the use of defined deadlines for the completion of EA processes would encourage timely completion and, consequently, more speedy deployment of broadband and other critical communications facilities across the Nation.

Respectfully submitted,

s/ Joshua Seidemann
Joshua Seidemann
Vice President of Policy
NTCA–The Rural Broadband Association
4121 Wilson Blvd., Suite 1000
Arlington, VA 22203
703-351-2035

s/B. Lynn Follansbee
B. Lynn Follansbee
Vice President, Law and Policy
United States Telecom Association
607 14th Street, NW, Suite 400
Washington, D.C. 20005
202-326-7300