



December 20, 2023

Jessica Rosenworcel, Chairwoman
Federal Communications Commission
45 L Street Northeast
Washington, DC 20554

Dear Chairwoman Rosenworcel:

We are writing to you about the FCC's National Environmental Policy Act (NEPA) procedures. As you know, the White House Council on Environmental Quality (CEQ) is in the process of [revising its rules](#) implementing NEPA. When finalized, the rules will likely require agencies to revise their procedures, in consultation with CEQ, to comport with the rules by the end of 2024.

As wireless deployments proliferate, more and more communities are affected—and will be affected—by telecommunications infrastructure, such as towers, small cells, earth stations, satellites, and fiber- and wireline-laying. Recent legislation, such as the [Infrastructure Investment and Jobs Act](#), as well as proposed legislation, will accelerate such deployment. While this federal and industry investment is critical, NEPA can help ensure such investment is made wisely for future and present generations.

These deployments have a range of potential significant environmental, historic, and cultural effects—on the ground as well as in space. NEPA requires agencies to consider those effects and to ensure that local and Tribal voices are heard in the decision-making process before taking action.

Yet, in many ways, the FCC already [falls short of](#) what NEPA and CEQ rules require in a myriad of ways. To name just a few,

- It ignores major federal actions (MFAs) requiring environmental review, such as its distribution to industry of billions of dollars that support build-outs for wireline service or updated wireless service. To circumvent NEPA, it also improperly determined, as the DC Circuit Court of Appeals found in 2019 in [United Keetoowah v. FCC](#), that it was in the public interest not to require a review of small cells.
 - Its NEPA rules create an unsupported and overly broad Categorical Exclusion (exemption from NEPA assessment) so that, for example, [satellite licensing](#) and submarine cable licensing are categorically excluded from review. (Although required, no record of documentation of the default Categorical Exclusion seems to exist.) Among other impacts,
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these activities could result in light pollution affecting both dark skies and migratory birds and the destruction of underwater reefs.

- With little oversight or tracking, it delegates initial environmental review, determinations of the level of environmental review (for example, whether a written Environmental Assessment (EA) is required in light of potential effects), and EA drafting to the industry proponents of the project.
- Its environmental review process is so perfunctory that it omits consideration of countless potential environmental effects, including aesthetic impacts, large-scale tree-clearing, and cumulative effects. Furthermore, its short list of “extraordinary circumstances” that remove an action from a Categorical Exclusion is interpreted so narrowly that even those exceptions to trigger an EA are even more limited.
- It fails to enforce its NEPA rules vigorously, resulting in rampant industry non-compliance.
- It fails to provide adequate notice and opportunities for public comment on projects.
- It fails to make environmental documents, such as radiofrequency (RF) emissions studies, readily accessible to the public. If mitigation is required, no public record of the mitigation in the form of a mitigated CE or EA exists. (See proposed [47 CFR 1501.4\(b\)\(1\)](#)).
- As the DC Circuit admonished in *American Bird Conservancy v. FCC*, it places an unfair burden on the public in the complaints/comments phase to establish environmental effects.
- It routinely ignores or dismisses public comments so that it authorizes virtually all wireless projects as proposed, regardless of environmental concerns raised.

These inadequate and arguably unlawful practices bespeak a lack of agency transparency and accountability and a disregard for the environment and legal obligations imposed by NEPA. In promulgating new procedures, the agency now has an opportunity to address many of these issues and fully comply with the letter and spirit of the law. Under your leadership, we hope the FCC can create a robust, meaningful, and legally sufficient environmental review process.

We would greatly appreciate the opportunity to discuss these issues further with you. Thank you for considering our concerns and meeting request.

Sincerely,



Timothy Whitehouse
Executive Director

cc: Brenda Mallory, Chair CEQ