April 16, 2025

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
Petition for Rulemaking to Update Part 1, Subpart I of	)	RM-12003
The Commission's Rules implementing NEPA	)	

COMMENTS OF PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY (PEER)

PEER is an advocacy organization with interests in FCC-related issues, particularly those pertaining to the installation of telecommunications infrastructure and Wi-Fi technology, and associated impacts to public health, wildlife, and the environment. PEER submits these comments on CTIA's request that the Commission update and streamline the Commission's NEPA rules in Part 1, Subpart I, to facilitate wireless broadband deployment across the country.[1] In particular, CTIA requests that the Commission revise its rules to provide that wireless facility deployments pursuant to a geographic area license that do not require antenna structure registration (ASR) are not major federal actions (MFAs) under NEPA.[2] CTIA also asks that the Commission "[i]mplement other reasonable reforms to the Commission's NEPA procedures consistent with statutory mandates, recent Presidential directives, and actions by [the Council on Environmental Quality] —including by ensuring that any facilities that remain governed by NEPA are subject to a review process with clear timelines and predictable standards."[3]

PEER disagrees with many of CTIA's assertions about NEPA and the current FCC NEPA process but would support a rulemaking that brings FCC's NEPA process into line with the

1 CTIA – The Wireless Association's Petition for Rulemaking, RM-12003 (filed Mar. 27, 2025) (Petition).

2 *Id.* at 4.

3 *Id*. at 5.

amended statute and Council on Environmental Quality (CEQ) guidance and practice. Instead of eliminating a class of actions from MFAs for the wireless industry, the FCC should issue a Notice of Intent seeking comments on what changes should be made to the FCC NEPA rules to update them to reflect current statutory and judicial mandates as well as CEQ guidance.

1. The Petition Is Deficient.

As a preliminary matter, we note that the CTIA's petition is deficient because it fails to contain the text of the rules CTIA wants and is not verified. *See* 47 C.F.R. §§1.52, 1.401(b), (c). The Commission should therefore dismiss the petition. *See In re Opening a Gen. FM Translator Window*, DA-23-901, 2023 FCC LEXIS 4055, *1-2 (2023)

Should the FCC proceed with rulemaking, we request a rulemaking on NEPA procedures that will result in procedures conforming with the letter and spirit of NEPA. We note that among environmental effects that the FCC is obligated to consider under NEPA are radiofrequency (RF) exposure, and guidelines for RF exposure must be updated to respond to the mandate in *Environmental Health Trust, et al v. FCC*, 9 F.4th 893 (D.C. Cir. 2021).

2. CTIA's Argument That Non-ASR Deployments Are Not MFAs is Wrong.

CTIA requests that the FCC revise its rules to provide that non-registered wireless facility deployments pursuant to a geographic license are not MFAs under NEPA. CTIA argues that the FCC does not have substantial control of or responsibility for the individual deployments for them to be considered an MFA under the new statutory NEPA definition in 42 USC 4336e (10)(A). Yet CTIA is wrong when it argues that FCC does not have sufficient control over individual sites, even those not in ASR and even if it does not know where site locations.

Authorizing the use of spectrum in a given area has long been deemed an MFA even though at the time of the authorization, neither the FCC non the licensee knows the exact location of associated sites. FCC has long had, and still retains, "the exclusive ability to regulate the relevant radio facility operations. *See Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, 11 FCC Rcd 15123 (1996) ("First Order"); *Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934*, 12 FCC Rcd 13494 (1997) ("Second Order")." *Cellular Phone Task Force v. FCC*, 205 F.3d 82, 87 (2d Cir., 2000). *See also* S. Rep. No. 104-230, at 209 (describing 1996 Telecommunications Act Section 704, (codified at 47 USC §332(c)(7)).[4]

Although the agency can determine which of its actions constitute an MFA, those determinations must still be reasonable and comport with NEPA. That CTIA concedes that the Commission retains oversight and enforcement with regard to RF emissions from facilities that operate pursuant to geographic licenses (Petition, FN 63) undermines CTIA's argument that the FCC does not have substantial control over the deployments and that therefore licensing these deployments are not MFAs.

Furthermore, in its 2018 Infrastructure Order, the FCC declared small cell deployment a non-MFA (under the previous definition in CEQ rules) but the court in *United Keetoowah Band of Cherokee Indians v. FCC*, 933 F. 3d 728 (2019) rejected the FCC's "deregulation" under (the public interest determination) as arbitrary and capricious. (933 F.3d at 740-742). As

[4] "The limitations on the role and powers of the Commission under this subparagraph relate to local land use regulations and are not intended to limit or affect the Commission's general authority over radio telecommunications, including the authority to regulate the construction, modification and operation of radio facilities."

reflected in NEPA, "public interest" includes considering and minimizing environmental impacts. The court found no basis to support the FCC's conclusion that small cell deployments will "leave little to no environmental footprint" (933 F.3d at 741) and provided a litany of potential environmental impacts associated with the cumulative and individual effects of "as many as 160,000 densely spaced 50-foot towers…" (*id*.)) whether their deployment involves ground disturbance or not. While the word "cumulative" is no longer explicit in NEPA or CEQ rules, these cumulative harms associated with densification are "reasonably foreseeable" and must be analyzed. (*See* CEQ's Memorandum for Agency Heads on NEPA Implementation invoking the Trump Administration's 2020 NEPA rules (February 19, 2025) ("Memorandum"), p. 5)

Beyond RF emissions as a potential environmental effect, deployments, which can entail ground disturbance, road and trench construction, and vegetation removal, can have a myriad of environmental effects, including to, for example, cultural and historic properties, viewsheds, and endangered species habitat. Because NEPA is an umbrella statute, the FCC meets its obligations to comply with other environmental statutes through its NEPA procedures. For example, it must comply with the National Historic Preservation Act (NHPA), the Clean Water Act, and the Endangered Species Act, and entities to which it has delegated its NEPA compliance must therefore comply with those statutes and conduct some sort of environmental evaluation. The FCC cannot conclude that it has no control over these deployments and that any given non-ASR facility will not have environmental effects. Similarly, deployments of mixed-use towers and poles are also MFAs; many of these are categorically excluded, but some may have environmental effects, particularly on cultural resources, that can be avoided or mitigated through a NEPA review.

In complying with the *Keetoowah* court order, the FCC restored the minimal review required for small cells which in effect categorically excluded each deployment. Industry currently performs its own limited environmental review of deployments and submits no documentation of its categorical exclusion (CE) determination to the FCC. Deeming these deployments non-MFAs would only minimally reduce the industry's alleged "burden" of environmental compliance. A cursory environmental review to assure compliance with environmental laws other than NEPA would still be required. Alternatively, the FCC could create a CE for small cells but should require a showing of RF emissions compliance. We reject CTIA's assertion that by removing geographic deployments from NEPA consideration, the FCC is complying with NEPA. (Petition, p. 18)

3. Further Streamlining the NEPA Process is Unnecessary and Risks Undermining NEPA Compliance.

Many of CTIA's streamlining suggestions are unnecessary and counterproductive. Most submissions are already reviewed within a short timeframe that reflect many of CTIA's processing suggestions. The majority of processing delays are due to missing information on the applicant's part and deadlines should be tolled to reflect applicant's failure to provide information. As for CTIAs suggestion that EAs that address only effects that triggered the EA, with no documentation of checklist review but for a completed EA, the Commission would have no evidence that a complete review was done but for an EA that reviews a panoply of environmental effects.

4. FCC's NEPA Rules Are Outdated And Inadequate And Should Be Revised.

While we take issue with CTIA's assertion that FCC rules are onerous for applicants, we agree with CTIA that the procedures require significant revision in light of statutory changes

imposed by the 2023 Fiscal Responsibility Act amendments to NEPA and other permitting process reforms as well as the withdrawal of CEQ rules and CEQ's 2025 Memorandum invoking the Trump Administration's 2020 NEPA rules. Rules should also be updated to reflect scientific and technological changes since their promulgation. Agencies have until February 2026 to revise their NEPA procedures. Accordingly, to comply with the new legal framework,[5] the FCC will have to significantly revamp its rules and revise its practices in several ways:

- **Major Federal Actions (MFAs)**: Whether actions are MFAs and are subject to NEPA is, among other factors, a determination about the amount of control and responsibility an agency has over an action as well as the extent of funding within certain parameters; once an action is deemed an MFA, whether to comply with NEPA is not discretionary. The FCC has historically ignored NEPA-triggering MFAs, such as cable and transmission line projects and distribution to industry of billions of dollars that support build-outs for telecommunications or broadband services. Whether by design or ignorance (in part due to lack of experts within bureaus), it has never considered many of its actions as potential NEPA triggers. Even under the narrower definition of MFAs, the FCC will need to consider on an agency-wide basis whether a multitude of actions are MFAs. Such determinations should be made transparently, and provide stakeholders with timely opportunity for review.

- **Categorical Exclusions**: FCC's NEPA rules create an unsupported and overly broad CE under which ALL actions, other than those that fall into a limited set of "extraordinary circumstances" (e.g., in a floodplain, affecting historic resources or endangered species) are categorically excluded. With questionable or no rationale, some actions are excluded by order (e.g., submarine cables) while others are excluded in practice (e.g., satellite licensing, satellite earth station licensing).

  The combination of the presumption of a CE and a narrow set of effects considered (initially by applicants) means that, for example, satellite and submarine cable licensing and countless tower sitings do not trigger an environmental assessment (EA) or substantive review. Among other impacts, these particular actions could result in light pollution affecting both dark skies and migratory birds, the destruction of underwater

[5] Although CEQ had signed off on the FCC's original 1986 NEPA rules and amendments, its procedures failed to meet many of the requirements of either the 1978 CEQ rules or even the 2020 Trump CEQ rules. See E.g., https://peer.org/commentary-fcc-fails-follow-environmental-laws/.

reefs and coastal zones, and aesthetic impacts, respectively. Other effects not considered include: noise, hazardous waste, air emissions, and electric and magnetic fields to humans and other species.

CEQ guidance directs agencies to include specific criteria and identify "classes of actions that normally do not significantly affect the quality of the human environment. The procedures should provide the process for establishing new CEs, for revising existing CEs, for considering extraordinary circumstances in applying CEs, and for determining when documentation of a CE may be required." (Memorandum, p. 6)

By creating CEs up front, rather than an unsupported, all-encompassing CE with few exceptions, the FCC will have to support its CEs determinations via a publicly accessible administrative record. It will also need to support its (or industry's) determination that a given action is categorically excluded and not rely on the presumption that it is excluded.

- **Effects:** The FCC's streamlined review process (its "NEPA checklist") omits consideration of countless potential environmental effects, including visual effects, and impacts to many environmentally sensitive areas, such as coastal zones. Instead, the FCC unfairly shifts the burden to the public to not only raise but also establish effects that it (or industry) had failed to consider under the narrow list of extraordinary circumstances on the checklist. In effect, the agency makes the NEPA checklist exhaustive as it routinely dismisses those concerns as beyond the scope of the requisite environmental review. Because cat ex determinations are not submitted to the agency, in practice, even effects included on the checklist, such as those to a floodplain or from surface feature changes, are never reviewed by the applicant or agency.

  With a revised rule structure, the FCC's consideration of effects should be broader, whether their consideration is in its list of circumstances or raised by the public. The agency will also be required to consider all reasonably foreseeable environmental effects, including aesthetic, those related to public health, social and economic impacts (Memorandum, p.5) and effects that would violate state, federal, Tribal or local law. Furthermore, antenna effects include RF emissions, and those emissions should be updated per the 2021 mandate in *EHT v. FCC*, *supra*.

- **Public Involvement/Accessibility of Environmental Documents:** Currently, with no oversight or tracking, the FCC delegates determinations of whether a project is categorically excluded to the industry proponents of the project. Industry's environmental evaluation of limited effects to determine that an EA is not required is

neither submitted to the agency nor available to the public. EAs and FONSIs are difficult to access. These practices are problematic because the FCC is responsible for sponsor-prepared documents yet never sees them. Furthermore, the public can never access the checklist documentation to review, for example, the adequacy of and conclusions drawn from RF studies.

Per CEQ's Memorandum and Section 1507.4 (a) of 2020 CEQ rules (public access to environmental information and publication of environmental documents), FCC should at a minimum establish protocols for public involvement and how the agency will consider and address public comments. It should also have publicly accessible information and status reports on EAs and other aspects of the NEPA process. Accordingly, the FCC will now have to vastly improve public access to environmental documents, by, for example, having a centralized website for environmental information and notice. This change could entail making radio frequency (RF) studies of categorically excluded projects publicly available, posting and noticing EAs, documenting CEs and making NEPA checklists available, or requiring certification of industry cat ex or RF determinations.

The FCC will likely have to expand its opportunities for public comment, and change its current adversarial model of commenting under which it deems comments "objections" or "complaints," requires the public to establish and effect, and adjudicates the claim—without making those documents or its decision readily accessible to the public. The FCC will also need to establish better protocols better protocols for engaging State, Tribal, and territorial and local agencies beyond just the Nationwide Programmatic Agreements contained in 47 C.F.R. Part 1 Appendices B and C. (Memorandum, p.6)

- **Quality of EAs:** Applicant prepared-EAs often fail to reflect even the requirements of the FCC's current rules. NEPA requires procedures for sponsor preparation of EAs and analysis of all potentially reasonably foreseeable effects. FCC will need greater oversight to require more robust analysis to improve the caliber of EAs and comply with CEQ rules.

- **Emergency Provisions:** The CEQ Memorandum directs agencies to include processes for consideration of emergencies. The FCC has historically had no procedures for emergencies and has not consulted with CEQ when it overrides NEPA.

- **Mitigation:** Currently, if CEs (with review done by industry) rely on mitigation measures, the FCC does not require documentation of the mitigation; it relies on an honor system. Accordingly, if an EA would be triggered but for mitigation, (e.g., by lowering RF levels to below limits, by raising structures in a flood plain, by reducing impacts to historic

resources through a Memorandum of Agreement), the FCC generally does not require an EA.

Under 2020 CEQ rules, an action that had relied on mitigation previously to avoid an EA will arguably now require an EA, and EAs that avoid EISs by relying on mitigation will now require the agency to explain and enforce the mitigation with a monitoring or compliance plan. CEs that rely on mitigation or involve extraordinary circumstances will also likely need to be documented and made publicly available.

- **Capacity/resources for NEPA compliance:** Unlike most agencies, the FCC lacks a centralized NEPA office and has limited capacity for environmental compliance. Thus, the FCC has had neither the personnel nor resources to comply with NEPA. It should build its capacity to comply and appoint a senior agency official to oversee compliance.

With these and other changes that will render the new FCC rules NEPA-compliant, the FCC will not only minimize the environmental impact of projects and increase transparency, but will also facilitate deployment by reducing the controversy and litigation associated with its actions that delay environmental review processes.

Respectfully submitted,

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