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

In the Matter of Modernizing the Commission's National Environmental Policy Act Rules	)))))))	WT Docket No. 25-217

COMMENTS OF THE WIRELESS INFRASTRUCTURE ASSOCIATION

Contents

I. Introduction and Summary.

The Wireless Infrastructure Association ("WIA")[1] is pleased to submit these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM") in the above captioned proceeding.[2] Given significant changes in the policy landscape for environmental reviews across the Executive, Legislative, and Judicial branches,[3] the time is ripe for the Commission to review its permitting process for communications deployments under the National Environmental Policy Act ("NEPA") and National Historic Preservation Act ("NHPA"). Congress provided the most substantive changes to NEPA since the legislation's enactment in the Fiscal Responsibility Act ("FRA"),[4] while recent Executive and Judicial actions have reconfigured the role of the Council on Environmental Quality ("CEQ") in the broader environmental permitting landscape.[5] If adopted, the changes proposed in the NPRM will take an important step for the Commission in removing outdated and unnecessary rules. These changes will further spur key wireless network deployments, including densification, that will help deliver 5G—and soon 6G—services to all Americans.

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[1] The Wireless Infrastructure Association ("WIA") represents the businesses that build, develop, own, and operate the nation's wireless infrastructure. Members include infrastructure providers, wireless carriers, and professional services firms that are responsible for telecommunications facilities around the globe.

[2] *Modernizing the Commission's National Environmental Policy Act Rules*, Notice of Proposed Rulemaking, WT Docket No. 25-217, FED. COMMC'NS. COMM'S. (rel. Aug. 14, 2025) ["*NEPA NPRM*"].

[3] Exec. Order No. 14154, 90 Fed. Reg. 8353, §§ 5-6(a) (Jan. 29, 2025) ["E.O. 14154"]; Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610 (Feb. 25, 2025) ["CEQ Interim Final Rule"].

[4] Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023) (directing a review of rules for environmental and historic reviews of infrastructure) ["FRA"].

[5] *See* E.O. 14154; CEQ, Memorandum for Heads of Federal Departments and Agencies, Implementation of NEPA (Feb. 19, 2025) https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA02.19.2025.pdf ["Guidance Memorandum"].

Accordingly, WIA supports the Commission's tentative conclusion that certain wireless deployments pursuant to geographic area licenses do not have the requisite federal nexus of funding or control to qualify as a Major Federal Action ("MFA") or a "federal undertaking" for NEPA and NHPA, respectively.[6] In addition to right-sizing the triggers for environmental and historic review process, the NPRM also proposes to streamline and expedite reviews for deployments that will remain subject to environmental and historic evaluations.[7] WIA applauds the Commission for taking this opportunity to comprehensively review its rules and procedures to ensure that communications networks can be timely deployed without undue regulatory burdens.

While this NPRM is timely and appropriate, WIA also encourages the FCC to recognize the substantial work that has already been done in establishing NEPA and NHPA review frameworks at the Commission that are largely predictable, proportionate, and transparent.[8] Indeed, reforms considered in the FRA and recent executive actions are already well-integrated into the Commission's procedures, creating a permitting framework that is significantly more efficient and effective than many of its peer agencies. WIA generally encourages the Commission to codify and clarify its existing positions—such as where precedent comes from informal guidance or is tied to authority that no longer applies—in order to put its processes on solid legal footing; but cautions against major changes to procedures that may inadvertently increase the burden on applicants or open the Commission's rules to legal challenges.

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[6] *NEPA NPRM* at para. 21.

[7] *See id.* at paras. 84-97.

[8] *See, e.g.*, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* Third Report and Order and Declaratory Ruling, 33 FCC Rcd. 7705 (2018) (streamlining review for certain small wireless deployments) ["Small Cell Order"]; *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd. 12865 (2014) (implementing Section 6409 of the 2012 Spectrum Act to improve siting for Eligible Facilities Requests).

In addition to clarifying that the Commission's interpretation of MFA and federal undertaking does not include certain geographic area license deployments as proposed, WIA encourages the Commission to proceed with rules that would:

- Adopt an updated definition of Categorical Exclusion ("CatEx") consistent with the definition provided by Congress in the FRA while maintaining the FCC's overarching exclusion framework.
- Clarify for Extraordinary Circumstances ("EC") that mitigation efforts for facilities in flood plains apply to the equipment at the site, not the underlying structure[9] and delete the catchall EC in section 1.3107(c).[10]
- Reiterate that the Commission maintains exclusive jurisdiction over placements and limitations of wireless facilities based on radiofrequency emissions.
- Provide that existing structures with incomplete documentation of environmental and historic reviews that would not otherwise require review under the updated rules are eligible for future siting without further action.
- Implement changes, including page limits and timelines for reviews, for projects requiring an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS") provided in the FRA.

II. The FCC's Existing NEPA Compliance Framework Provides a Strong Foundation that is Largely Consistent with Recent Changes to the Law.

The Commission has taken many steps in recent years to ensure that its environmental reviews are proportional to the limited potential impacts wireless deployments present.[11] From its overarching CatEx framework to preventing duplicative reviews for colocations, the FCC has created a permitting regime that respects and supports the responsible and sustainable deployment of communications infrastructure without creating unnecessary barriers. The Commission's NEPA framework also occupies an important role in setting a national permitting regime,

[9] *See NEPA NPRM* at para. 58.

[10] *Id.* at para. 60.

[11] *See, e.g.*, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Second Report and Order, 33 FCC Rcd 3102 (2018) (exempting certain wireless deployments from environmental review); *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, WT Docket No. 03-128, Report and Order, 20 FCC Rcd 1073 (Sept. 9, 2004).

providing critical consistency and predictability for the companies working to deploy wireless networks across the country. While continued modernization is important, WIA urges the Commission to recognize the strengths of its existing framework and ensure that any changes to its rules do not have the unintended consequence of increasing burdens on regulated companies or invite disparate and fractured requirements across the states.

A. The Commission Should Seek to Codify and Make Permanent Many of its Existing Procedures.

In addition to its substantive role in providing federal preemption, the Commission's environmental review framework is unique when compared to other federal agencies due to prior efforts to streamline and improve its processes. Indeed, the Commission rules, which will still apply to many communications facilities even with the Commission's proposed changes to MFA, are generally already consistent with the substantive changes to NEPA. While WIA agrees that updates are needed in certain areas, such as removing references to repealed CEQ rules, the Commission is starting from a place of significant compliance today.

For example, in the FRA Congress added section 109 to NEPA which allows agencies to adopt CatEx's implemented by other agencies.[12] The Commission should generally not need to avail itself of this provision because all MFAs before it are already presumed to be categorically excluded.[13] This overarching CatEx framework appropriately assumes a project will not have a significant environmental impact and instead only places an enhanced burden to mitigate environmental effects where there is significant reason to do so. The inherent flexibility in the

[12] FRA at Sec. 109.

[13] *See* 47 C.F.R. Sec. 1.1306(a).

Commission's CatEx framework, and proven track record of its effectiveness, should counsel the Commission to maintain its current framework through this rulemaking.

Similarly, the FRA added provisions that allow for the designation of a "lead agency" to oversee environmental review where multiple agencies have jurisdiction.[14] Here again the Commission is ahead of its peers by having established an exemption from requiring additional reviews where another agency has already undertaken the necessary environmental review.[15] The Commission should recognize its unique position among other agencies and seek to maintain its compliance framework where appropriate for projects still subject to its environmental and historic reviews.

In addition to these existing practices, WIA supports the Commission providing formal guidance to its definition of "antenna farm."[16] The current rule's reference to where antenna towers are "clustered" leaves ambiguity as to when this exemption is available. Exempting deployments within a proscribed radius of similar existing structures from further environmental review encourages the efficient use of real estate while eliminating a redundant review. To this end, WIA encourages the Commission to clarify the Antenna Farm Exemption by providing that it applies where there are two or more antenna towers or supporting structures in close proximity to each other. While recognizing this new definition may require further contouring by the

[14] 42 U.S.C. § 4336e (9).

[15] *See NEPA NPRM* at para. 74-75 (discussing the Commission's Federal Agency Exception).

[16] *See id.* at para. 51; 47 C.F.R. Sec. 1.1306(c), Note 3 ("Antenna Farm Exemption").

Commission, WIA believes that this adjustment would ensure that the exemption is more readily available for its intended use.[17]

B. The FCC Must Maintain its Role as Federal Regulator of Structures Not Subject to Environmental Review to Preserve Consistency.

In order to ensure the timely and efficient deployment of wireless networks, it is critical that the Commission maintains its exclusive jurisdiction over siting decisions related to radiofrequency ("RF") emissions. Despite consensus in the scientific community that RF emissions from wireless facilities generally do not present a health risk,[18] and clear congressional intent for the FCC to serve as the exclusive regulator of siting requirements related to RF emissions,[19] misinformed claims that a deployment or installation could harm the public can quickly stymie efforts to improve service in a community. The federal preemption provided by the FCC's regulations and oversight of RF emissions have been an essential element in rapid wireless deployment across the country; the absence of controlling FCC authority on this subject would thwart the Commission's goals in this proceeding.[20]

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[17] If the Commission maintains its tentative conclusion that non-ASR deployments are not MFAs, WIA believes an appropriate definition of "proximity" would look for similar structures within a .5-mile radius of the proposed deployment. We welcome further opportunities to substantively engage with the Commission in crafting these rules.

[18] *See e.g.,* Am. Cancer Soc., *Radiofrequency (RF) Radiation*, https://www.cancer.org/cancer/risk-prevention/radiation-exposure/radiofrequency-radiation.html (last visited Sept. 11, 2025) ("Radiofrequency (RF) radiation, which includes radio waves and microwaves, is at the low-energy end of the electromagnetic spectrum. It is a type of non-ionizing radiation. Non-ionizing radiation does not have enough energy to remove electrons from an atom"); *Review of Published Literature between 2008 and 2018 of Relevance to Radiofrequency Radiation and Cancer*, FOOD AND DRUG ADMIN. (Feb. 2020), https://www.fda.gov/media/135043/download.

[19] 47 U.S.C. § 332(c)(7)(B)(iv) ("No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.").

[20] *See* Adkins, Bryan L., et al., *Federal Preemption: A Legal Primer*, CRS Reports (May 18, 2023), https://www.congress.gov/crs-product/R45825 ("The Supreme Court has identified two general types of preemption. First, federal law can *expressly* preempt state law when a federal statute or regulation contains explicit preemptive language. Second, federal law can *impliedly* preempt state law when its structure and purpose implicitly reflect Congress's preemptive intent.").

As the Commission notes in the NPRM, while it does not seek to directly change its rules regarding RF emissions, deployments that may no longer be required to complete environmental reviews under the new rules could be vulnerable to subsequent challenges that the project proponent did not consider the RF effects of the deployment.[21] While WIA does not concede that these deployments would be exempt from the Commission's rules on RF exposure if not included in the NEPA process, we do urge the Commission to clarify that all wireless deployments are subject to the Commission's RF in order to maintain this federal preemption.

III. WIA Supports Changes to the FCC's NEPA Framework to Encourage Deployments.

The Commission's proposed actions promise to accelerate needed deployment of wireless infrastructure to bring high-speed mobile connectivity more efficiently to every American. NEPA reviews have been shown to routinely be a source of delay and increased costs in infrastructure projects leading to bipartisan consensus around limiting the scope of unnecessary or unwieldly reviews under this statute.[22] While the proposed reforms will likely exempt many routine and small-scale activities, WIA supports the Commission taking this opportunity to streamline its rules and procedures for facilities still within its NEPA approval framework. The NPRM provides several updates to the FCC's rules that WIA's members believe would be particularly effective in improving the infrastructure landscape including clarifying interpretations of CatExs and ECs and implementation of the FRA's limits on paperwork and unending reviews.[23]

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[21] *See NEPA NPRM* at fn. 153 ("In the event certain licensing matters or registrations no longer require NEPA review, we seek comment on whether we should modify any of the Commission's other rules to make clear that the radiofrequency emission limits continue to apply to licensees and regulated devices. . . .").

[22] *See, e.g.*, FRA (providing new limitations to the breadth and length of environmental reviews); *Seven Co. Infra. Coalition v. Eagle Co., CO, et al.*, 605 U. S. ____ (2025) (discussing the steady growth in complexity of environmental reviews which have created unnecessary barriers to deployment).

[23] *See NEPA NPRM* para. 21-22 (providing summary of the changes proposed by the NPRM).

As an initial matter, WIA supports the codification of the Commission's proposed definitions of "Major Federal Action"[24] and "Categorical Exclusion"[25] along with the new approach to first consider if the project is an MFA and, if so, whether a CatEx applies.[26] These proposed implementations are consistent with Congressional and Presidential directives and will ensure that rules are interpreted and applied in a clear and uniform manner.

In adopting these definitions, WIA provides the following recommendations to ensure the rules are clear and consistent. For its definition of MFA, WIA encourages the Commission to exempt structures voluntarily registered in the ASR as provided on FCC Form 854.[27] These can include structures seeking FAA Determination of No Hazard ("DNH") due to contractual or other obligations unrelated to FCC approval.[28] WIA supports the Commission clarifying that MFA's are only those structures which are *required* to be registered in ASR. To its proposed definition of CatEx, WIA recommends the Commission maintain, specifically, the phrase "do not individually or cumulatively have," rather than the more ambiguous "normally."[29]

WIA further supports adopting the proposed changes to the Commission's rules for determining where projects are not categorically excluded from further environmental review due to the presence of ECs. First, the NPRM proposes a commonsense change to how the Commission

[24] *Id*. at para. 21.

[25] *Id*. at para. 53-54.

[26] *Id*. at para. 21-22.

[27] *See id. at* para. 80-82. These structures could also be considered under the MFA exclusion provided at 42 U.S.C. § 4336e (10)(B)(i)(II) (excluding from the definition of MFA a non-Federal action with minimal Federal involvement where the agency cannot control the outcome of the project).

[28] *NEPA NPRM* at para. 80.

[29] *See id*. at para. 57 (requesting feedback on potential changes to the Commission's definition of CatEx to bring it into compliance with changes in federal law).

evaluates structures in a floodplain.[30] Clarifying that the facilities that must be elevated for deployments within flood plains are the associated equipment at the facility, including electrical equipment, but not antenna tower itself will prevent needless, or cost-prohibitive, mitigation efforts on structures designed to engineering and industry standards that contemplate resiliency.

Second, the Commission should delete section 1.1307(c) which can too often be abused and derail projects that would otherwise deliver needed connectivity and capacity to that area.[31] With the exception of section 1.1307(c), WIA believes the current enumerated ECs sufficiently capture where a proposed MFA may significantly affect the environment to satisfy the Commissions NEPA obligations. In retaining the catchall provision in 1.1307(d), Bureau staff, who are well equipped to determine where a project may need additional environmental review, are able to ensure that the Commission continues to satisfy its NEPA obligations and support the sustainable deployment of infrastructure.[32]

WIA additionally supports adopting the provisions in the section Modernizing the Commission's EA and EIS Requirements.[33] These changes generally reflect the recommendations Congress provided in the FRA, including limitations on the scope of impacts considered by the approving authority and what alternatives must be considered, timelines for initial and final reviews, and providing clarity on what objections may require further evaluation.[34]

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[30] *Id*. at para. 58.

[31] *Id*. at para. 66, fn. 184.

[32] *Id.* at para. 63, 66-67 (discussing potential changes to the Commission's existing "catchall" ECs).

[33] *See generally id.* at paras. 84- 97 (considering changes to the Commission's EA and EIS process to ensure compliance with changes in law and policy).

[34] *See id* at paras. 89-91 (providing new requirements for timelines to submit EAs and proscribed timeline for Commission Action), paras. 95-97 (providing the same for EIS).

Consistent with these changes, WIA also urges the Commission to consider eliminating its requirement of public notice found in section 17.4(c) (3) and (4).[35] While recognizing the importance of considering the input of the community where a facility will be located, WIA's members report that these provisions can and have been misused to create arbitrary barriers to needed deployments. Wireless facility providers already must take feedback from the community as part of the regular zoning and planning process. Providing a federal obligation to further solicit feedback at best duplicates work that already must be done and in the worst case can allow as few as one resident to delay or stop a project that would benefit the whole community.

IV. The Commission Should Also Seek to Streamline Its Historic Reviews.

The NPRM recognizes that NHPA reviews have long been intertwined with NEPA in the Commission's permitting regime.[36] Similar to its analysis of NEPA requirements, WIA agrees that it is appropriate for the Commission to exempt certain deployments that do not have the requisite federal control from its definition of federal undertaking. By maintaining rules that require further review where an MFA is in a culturally or historically significant area or otherwise required to be registered with the FCC before construction, the Commission can ensure its rules satisfy its statutory obligations and preserve salient historic interests without subjecting routine and necessary construction to onerous reviews.

Generally, WIA supports the Commission finding that structures which are not MFAs are also not federal undertakings as part of this rulemaking.[37] As discussed in the NPRM and supported by commenters, the analysis of whether a project is an federal undertaking which

[35] 47 C.F.R. Sections 17.4(c) (3) ("Local notice") and (4) ("National notice").

[36] *NEPA NPRM* at para. 36.

[37] *See id*. at para. 40, 44 (seeking feedback on whether the change to the Commission's definition of MFA should lead to additional changes in NHPA reviews).

triggers NHPA is substantially similar to whether the project is an MFA triggering NEPA.[38] If the Commission proceeds with its proposal to exempt certain structures from its definition of MFA, it logically follows that they would also not be considered federal undertakings.

WIA further supports maintaining the Commission's two limited triggers for historic reviews—where projects are subject to section 1.1312(b) and where registration is required under section 303(q) of the Communications Act.[39] However, as discussed in the NEPA context,[40] the Commission should ensure its rules exempt voluntarily registered structures from this procedure because the Commission does not possess sufficient discretion or control over the deployment to qualify as an undertaking.

With these changes, the Commission should take the opportunity to address an outstanding issue of ambiguity, complex NEPA and NHPA requirements, and regulatory inefficiency—so-called "twilight towers." A number of towers currently exist in a state of regulatory uncertainty for further colocation due to the Commission's evolving environmental and historic review rules in the 2001-2004 time period.[41] Colocations on these structures, which have now existed for over twenty years, should be deemed by the Commission to have a low likelihood of any historic impact. The 2001 Nationwide Programmatic Agreement ("NPA") provided regulatory clarity by providing a date certain of March 16, 2001, in order to further the Commission's policy of encouraging

[38] *Id*. (discussing how removing projects from the environmental review process could eliminate the limited approval authority required for the FCC to invoke NHPA). *See also* CTIA Petition for Rulemaking, RM-12003, at 21.

[39] *NEPA NPRM* at para. 38.

[40] *See supra* pg. 7 and associated discussion.

[41] *See Comment Sought on Draft Program Comment for The Federal Communications Commission's Review of Collocations on Certain Towers Constructed Without Documentation of Section 106,* WT Docket No. 17-79 (Dec. 14, 2017).

colocation.[42] In addition to any forward looking determinations regarding MFAs or federal undertakings, WIA encourages the Commission to update its rules so that all towers, even those requiring ASR filing, that were built before the effective date of the 2004 Wireless Facilities NPA[43] are exempt from any NHPA requirements related to that tower's original construction and thus eligible for further colocations.

V. Conclusion.

WIA appreciates the Commission taking this fresh look at its rules and procedures for NEPA and NHPA reviews. Consistent with Chairman Carr's Build America Agenda, the NPRM proposes an effective framework that will ensure critical wireless deployments are not subject to unnecessary and burdensome reviews. Building on the existing robust and effective permitting framework will allow the Commission to remove lingering barriers and ensure all Americans can quickly receive the benefits of mobile connectivity.

Respectfully submitted,

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[42] *See The Wireless Telecommunications Bureau Seeks Comment on a Draft Programmatic Agreement with Respect to Co-Locating Wireless Antennas on Existing Structures*, Notice, 66 Fed. Reg. 795-97 (Jan. 4, 2001). *See also Tentative Programmatic Agreement with Respect to Co-Locating Wireless Antennas on Existing Structures*, Notice, 66 Fed. Reg. 17554-57 (Apr. 2, 2001).

[43] *See Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertaking Approved by the Federal Communications Commission*, available at https://www.achp.gov/sites/default/files/programmatic_agreements/2019-04/nw.fcc_.undertakings%20approved%20by%20fcc.pa_.04oct04.pdf (adopted Oct. 4, 2004).