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

In the Matter of	)	
	)	
Petition for Rulemaking to Update Part 1	)	RM-12003
Subpart I of the Commission's Rules	)	
Implementing the National Environmental	)	
Policy Act	)	

To: Wireless Telecommunications Bureau

REPLY COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE

The Enterprise Wireless Alliance ("EWA") is pleased to reaffirm its support for the above-identified Petition for Rulemaking ("Petition") filed by CTIA - The Wireless Association ("CTIA").[1] The Petition asks the Federal Communications Commission ("FCC") to revisit its requirements regarding the applicability of provisions of the National Environmental Policy Act ("NEPA") to wireless facilities deployed pursuant to geographic licenses when the facility does not require antenna structure registration ("ASR"). EWA agrees that recent actions by the White House[2] and the Council on Environmental Quality ("CEQ")[3] warrant reassessing the FCC's requirements. Those actions can be read to challenge previous conclusions that those facilities are Major Federal Actions ("MFAs") under NEPA. The Petition also asks that facilities that remain subject to NEPA be reviewed based on a defined timeline and with predictable standards.

The FCC is committed to addressing unnecessary regulatory burdens.[4] Specifically, it seeks to eliminate rules that are "unnecessary in light of current circumstances."[5] EWA's Reply

[1] *Wireless Telecommunications Bureau Seeks Comment on CTIA Petition for Rulemaking*, Public Notice, RM-12003, DA 25-290 (rel. Mar. 31, 2025). The Petition was filed on March 27, 2025.
[2] *See* Exec. Order No. 14154, 90 Fed Reg. 8353, §§ 5-6(a) (Jan. 20, 2025) ("NEPA EO").
[3] *See* CEQ, Memorandum for Heads of Federal Departments and Agencies, Implementation of NEPA (Feb. 19, 2005) ("CEQ Memo").
[4] *Delete, Delete, Delete*, Public Notice, GN Docket No. 25-133, DA 25-219 (rel. Mar. 12, 2025).

Comments in that proceeding noted broad support for relief in this area as complying with NEPA requirements is time-consuming and often burdensome. Being relieved of that responsibility would be welcome news for geographic licensees that deploy multiple facilities whether to meet buildout requirements or operational needs or likely both. The issues raised in the Petition warrant serious consideration under the deregulatory approach adopted by the FCC.

The Petition takes the position that deployment under geographic authority is not an MFA, provided the facility does not require an ASR, because in legislative action in 2023 an MFA was defined as "an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility."[6] The legislation also stated that an MFA does not include non-Federal actions where there is "no or minimal Federal funding" or "no or minimal Federal involvement where a Federal agency cannot control the outcome of the project."[7] The Petition distinguishes facilities constructed pursuant to geographic licenses from those authorized by site-based licenses and those that require a construction permit prior to deployment. It analogizes them to facilities constructed on unlicensed spectrum that have never been subject to NEPA.

The FRA, the NEPA EO, and the CEQ Memo make clear that the FCC and other Federal agencies are to evaluate their NEPA requirements viewed through a less burdensome, less regulatory lens as to what constitutes an MFA. The Petition points out that in 1987, the Chief of the Common Carrier Bureau indicated that there did not appear to be an FCC, or therefore a Federal, undertaking when a licensee allowed sites to be added without prior FCC approval, but that subsequent FCC decisions took the reverse position. The more regulatory position was

[5] *Id*. at 1.
[6] Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 321, 137 Stat. 10, 38-46 (codified at 42 U.S.C. §§ 4321-47) ("FRA").
[7] 42 U.S.C. § 4336e(10)(B)(i)(I)-(II).

affirmed by the Courts in the pre-Loper Bright environment.[8] The Petition urges the FCC to pursue this opportunity to revisit NEPA requirements, which would be consistent with Chairman Carr's overall deregulatory approach to policy-making.

The Petition distinguishes the service authorized to be provided pursuant to a geographic license over which the FCC retains substantial control and responsibilities and the facilities or deployments used to provide that service. Having determined that no specific FCC authorization is required for those facilities, there is nothing to support a finding that the FCC nonetheless has substantial control over or responsibility for them.[9] The FCC also lacks control over the "outcome" of those deployments. It cannot mandate that a licensee deploy facilities. Its authority is limited to revoking a geographic licensee's right to continued use of spectrum to provide a service.

A finding that facilities deployed pursuant to geographic licenses are not subject to NEPA requirements would also mean that the facilities are not undertakings under the National Historic Preservation Act ("NHPA") as the courts have considered NEPA MFAs and NHPA undertakings as definitionally coterminous. This too would result in a meaningful removal of a burdensome and often time-consuming regulatory requirement. While a number of entities with state historic preservation responsibilities and certain tribal nations oppose CTIA's position, the issue must be determined by the statutory language itself as the expression of Congressional intent. EWA agrees with CTIA's reading of that language and with its conclusion that sites constructed pursuant to geographic licenses that do not require ASRs do not qualify as MFAs.

EWA also supports CTIA's position that mixed use towers and poles, ones that support facilities for both geographic and site-based authorizations are not MFAs, again provided that

[8] CTIA Petition at 7-9; *see Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

[9] Although geographic licensees are subject to coverage requirements, a failure to meet those requirements and become subject to an FCC enforcement action does not constitute an MFA. *See* 42 U.S.C. § 4336e(10)(B)(v); *see also San Francisco Tomorrow v. Romney*, 472 F.2d 1021 (9th Cir. 1973).

they do not require ASRs. For example, wireless networks often involve geographically licensed spectrum and site-based microwave spectrum needed to support that network to be deployed on the same tower or pole. Adding a microwave link to the facility should not trigger a NEPA requirement, since the FCC still does not control the outcome of the network deployment.

Finally, EWA supports any proposal to more clearly define and streamline the FCC decision-making processes when NEPA/NHPA matters are before the agency. Recognizing that those matters can present complex, sometimes contested materials, every effort nonetheless should be made to act as quickly as possible while keeping parties apprised of the status and likely timing for a decision. Whatever that decision, the FCC can and should function as a facilitator and not as a bottleneck for these projects.

The speed with which the FCC has solicited comments on the Petition suggests the agency recognizes the significant deregulatory potential of the issues raised in it. EWA urges the FCC to adopt a Notice of Proposed Rulemaking consistent with the recommendations in the Petition as expeditiously as possible.

Respectfully submitted,

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