



September 18, 2025

VIA ELECTRONIC SUBMISSION

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Modernizing the Commission's National Environmental Policy Act (NEPA) Rules; WT Docket No. 25-217 (Aug 19, 2025)

Dear Ms. Dortch:

On August 19, 2025, the Federal Communications Commission (FCC) published a proposed rule titled *Modernizing the Commission's National Environmental Policy Act (NEPA) Rules*.¹ This letter constitutes the Office of Advocacy's (Advocacy) public comments on the proposed rule.

On September 4, 2025, Advocacy held a roundtable with small entity stakeholders to discuss concerns with the FCC's proposed NEPA rule. Advocacy's chief concerns are: the need for cross-agency coordination, reasonable and workable timelines for environmental reviews, clearer definitions of what constitutes a major federal action, and creating new categorical exclusions to provide efficient administration of NEPA rules.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA) that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The

¹ WT Docket No. 25-217 (Aug. 19, 2025) [hereinafter Proposed Rule].

views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.⁴ If a rule is not expected to have a significant economic impact on a substantial number of small entities, agencies may certify it as such and submit a statement of the factual basis for such a determination that adequately supports its certification.⁵

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁶ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, unless the agency certifies that the public interest is not served by doing so.⁷

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."⁸

B. FCC's Proposed National Environmental Policy Act Rule

NEPA requires federal agencies to analyze the environmental impacts of their actions. It is a procedural statute and does not mandate specific outcomes. Specifically, the U.S. Supreme Court recently stated "NEPA is a procedural cross-check, not a substantive roadblock. The goal of the law is to inform agency decision making, not to paralyze it."⁹

Until recently, NEPA regulations were promulgated by the White House Council on Environmental Quality (CEQ). On February 25, 2025, in accordance with Executive Order (EO) 14154, *Unleashing American Energy*,¹⁰ CEQ published an interim final rule repealing its NEPA implementation regulations.¹¹

² Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

³ Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

⁴ 5 U.S.C. § 603.

⁵ *Id.* § 605(b).

⁶ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

⁷ *Id.*

⁸ Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

⁹ *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497, 1507 (2025).

¹⁰ 90 Fed. Reg. 8353 (Jan. 29, 2025).

¹¹ 90 Fed. Reg. 10610 (Feb. 25, 2025).

In conjunction with the interim final rule, CEQ has also issued NEPA implementation guidance to federal agencies.¹² The guidance states individual agencies, in accordance with EO 14154, “must revise or establish their NEPA implementing procedures (or establish such procedures if they do not yet have any) to expedite permitting approvals” within one year.¹³

In accordance with the CEQ’s guidance, FCC issued a proposed rule updating their NEPA procedures on August 19, 2025.¹⁴ The FCC’s proposed rule seeks input from the public on how to better refine and streamline their NEPA process, which primarily impacts wireless service providers.¹⁵ As part of their proposal, the FCC is seeking comments on how to define “major federal action,” which triggers NEPA reviews, and whether further exceptions are necessary.¹⁶

II. Advocacy’s Small Business Concerns

Advocacy heard feedback from small entities during a September 4, 2025, roundtable on the proposed rule. Advocacy’s chief concerns are ensuring coordination among federal agencies, enforcing reasonable and firm review timelines, narrowing the definition of major federal action, and establishing additional categorical exclusions.

A. Ensuring Coordination Among Multiple Federal Agencies

In the past, the CEQ’s regulations provided a baseline for other agencies’ NEPA rules. As a result of the CEQ withdrawing its NEPA implementation regulations, individual agencies, including the FCC, will assume the responsibility for NEPA compliance.

Without CEQ’s implementing regulations, agencies will have the flexibility to develop their own procedures for meeting NEPA’s requirements while focusing on their own statutory mandates. Further, agencies will be able to take better advantage of their familiarity with the specific projects they build. In the FCC’s case, they have expertise in the development of communications infrastructure projects, and their NEPA regulations should reflect this.

At the same time, there are many small businesses who work on and are impacted by projects involving multiple agencies. For example, during Advocacy’s roundtable to discuss FCC’s proposed rule, one small business shared that a communications project may require working with the Bureau of Land Management, Army Corp of Engineers, Forest Service, Department of Agriculture, Fish and Wildlife Services, state Department of Transportation, tribal lands, and advisory councils. One way to solve this problem is to designate a “lead agency” on multi-agency projects. The lead agency can set timelines and harmonize schedules amongst the different agencies involved in a project.

¹² Memorandum from Katherine Scarlett, Chief of Staff, Council of Env’t Quality, to Heads of Federal Departments & Agencies, *Implementation of the National Environmental Policy Act* (Feb. 19, 2025), <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf>.

¹³ *Id.* at 1, 3.

¹⁴ *See* Proposed Rule, *supra* note 1.

¹⁵ *Id.*

¹⁶ *Id.*

It is also important when developing NEPA implementation regulations, the FCC maintains a degree of consistency with other agencies to avoid unnecessary project expenses and delays. Confusion occurs for small businesses when projects involve more than one federal agency, which leads to both project delays and litigation. In cases where NEPA-related litigation occurs, it can add an average of 4.2 years to a project's completion time.¹⁷ Small businesses at Advocacy's roundtable reiterated numerous instances when working with federal, state, local, and tribal governments create circumstances where small entities can miss a filing deadline or miss crucial information during the review process.

Advocacy recommends the FCC be the lead agency on communications infrastructure projects involving multiple federal agencies. Further, Advocacy also recommends the FCC ensure that its NEPA regulations are consistent, to the greatest degree possible, with those of other agencies.

B. Enforce Reasonable and Firm Review Timelines for NEPA

On June 3, 2023, the Fiscal Responsibility Act of 2023 (FRA) was signed into law.¹⁸ Among other changes to NEPA, the FRA sets a time limit of two years for an environmental impact statement (EIS) and one year for an environmental assessment (EA) to be completed.¹⁹ Both the CEQ's interim final rule and guidance stress the need for individual agencies to maintain the FRA's requirements as they update their NEPA review processes.

When NEPA reviews delays a project, this impacts the limited time and resources of small entities attempting to complete construction of communications infrastructure. Construction projects may only be feasible during certain times of the year due to factors including inclement climates or animal conservation. Small construction businesses often have a limited number of crew and equipment that is deployed across multiple projects. Small businesses are expected to begin working the moment the NEPA review has concluded. When NEPA reviews take many months to complete, the construction season may have passed, or the workers and necessary equipment may be committed to another project. Advocacy urges the FCC to create reasonable and firm review timelines for NEPA related reviews so that projects can be planned around times when construction can actually occur.

To illustrate this, at Advocacy's roundtable on this proposed rule, one small construction company described how it cost \$9,000 to utilize bat detection technology. It took several months for them to determine whether a protected bat species (the northern long-eared bat) was roosting near the proposed construction site. The small business delayed construction work for several months, but the detection technology could not determine if the three chirps heard over the multiple month period belonged to the protected bat species or from other bats. The review delayed the project by over a year, and the company had to complete the entire construction project within a 60-day period that avoided any bats. This review imposed substantial costs on

¹⁷ The Breakthrough Inst., *Understanding NEPA Litigation, A Systematic Review of Recent NEPA-Related Appellate Court Cases*, 3 (July 11, 2024), <https://thebreakthrough.org/issues/energy/understanding-nepa-litigation>.

¹⁸ Pub. L. No. 118-5, tit. III, 137 Stat. 38.

¹⁹ 42 U.S.C. §4336a(g)(1).

the small business, delayed the project for over a year, and deprived a small rural community of communications access. Small entities that work through NEPA review have similar stories on how NEPA reviews impose significant delays and create uncertainty over when construction projects can actually begin.

According to CEQ's data, less than half of EIS documents were completed within the FRA's two-year limit in 2024.²⁰ To address this, the FCC should adopt NEPA procedures that move them closer to the FRA's goals. To accomplish this, the FCC's NEPA procedures should not add additional regulatory requirements or be implemented in a manner that will increase the time necessary to complete an EA or EIS.

C. Narrow The Definition of "Major Federal Action"

NEPA review is triggered when there is a major federal action (MFA) involved in the construction project. If the federal government does not have a substantial influence on a project, then it is exempt from NEPA review altogether. In the proposed rule, the Commission proposes the following definition for MFA: "the Commission must exercise sufficient control over the specific deployment actions at issue, rather than generalized control *qua* regulator."²¹ At Advocacy's roundtable, small entities urged the FCC to formally adopt this definition of MFA since it narrows the FCC's current review process.

The Commission also sought comment on "whether deployments pursuant to geographic area licenses involve the requisite federal nexus—whether under the MFA definition ('substantial federal control and responsibility') or the relevant non-federal exclusion ('no or minimal federal involvement where a federal agency cannot control the outcome of the project')."²² Small wireless providers currently trigger NEPA review when they seek the FCC to grant a license to use wireless spectrum within an area (this is called "geographic area licensing"). As part of a geographic area license, the wireless provider deployed devices throughout the area to transmit on the frequency, which the FCC gave the small wireless service provider license over. The FCC currently requires NEPA review on these geographic area licenses and unnecessarily limits the deployment for small wireless service providers.

When the FCC merely permits a wireless provider to transmit over a geographic area, the FCC does not show how the agency exerts substantial control over the wireless deployment. NEPA reviews should only be triggered when there is construction that is supported by the federal government, not merely when an agency permits a small business to utilize spectrum over an area. At Advocacy's roundtable, small entities urged the FCC to exclude "geographic area licensing" from the definition of MFA because the FCC acts only as a "generalized control *qua* regulator."²³ The FCC should only require NEPA review for projects where the FCC has a substantial part in the construction process.

²⁰ Council on Env't Quality, *Environmental Impact Statement Timelines (2010-2024)*, 3 (Jan. 13, 2025), https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2025-1-13.pdf.

²¹ Proposed Rule, *supra* note 1, at 11.

²² *Id.* at 10.

²³ *Id.*

D. Small Entities Request for Additional Categorical Exclusions.

Within the NEPA framework, agencies may determine that a routine action is significantly unlikely to affect the quality of the human environment and categorically exclude these actions from NEPA reviews, given there are no extraordinary circumstances that would trigger NEPA review.²⁴ In the FCC's proposed rule, the Commission seeks comment on whether to amend its current categorical exclusion rules.²⁵ At Advocacy's roundtable, participants put forward multiple categorical exclusions the FCC should include within its NEPA rules. Small construction companies request the FCC categorically exclude small cell site deployments, tower collocations, and laying fiber in existing corridors from NEPA review.

1. Small Cell Sites

Small businesses at Advocacy's panel shared that NEPA reviews on small cell sites can add an additional \$9,000 to the \$30,000 in costs to deploy a small cell site. The FCC should create a categorical exclusion for small cell sites. Smaller wireless facilities, commonly called "small cells," allow for quick deployment of 5G and allows improved signal in urban environments. Small cell deployments are relatively inexpensive compared to building a new tower and installing an antenna. They are typically deployed in urban settings on existing infrastructure such as streetlights and utility poles. There is little new construction on these projects as small cell sites are added onto existing infrastructure and impose only minor environmental impacts. These deployments are particularly useful in urban environments, where service providers must be flexible to work around any obstructions (concrete buildings) that diminish the provider's signal.

2. Collocations

The FCC should create categorical exclusions for collocations. Currently, when placing an antenna on a company's tower, the company placing the new antenna must undergo NEPA review. Given the only changes are the addition of an antenna, small construction companies argue that there does not appear to be a level of environmental impact that warrants NEPA reviews unless there are specific extraordinary circumstances. Requiring additional review for tower collocations unnecessarily delays the installation of wireless services.

3. Fiber In Existing Corridors

Ensuring that areas with previous construction can quickly move through an agency's NEPA process will ensure federal programs are efficient in helping small rural communities upgrade their communication services. For example, the Rip-and-Replace Program distributes money to small providers to remove telecommunications equipment from foreign countries that pose national security concerns. Additionally, as new funds form the Broadband Equity Access and

²⁴ See 42 U.S.C. § 4332(2)(c).

²⁵ Proposed Rule, *supra* note 1, at 23-24.

Deployment (BEAD) Program will soon be awarded, it is vital the FCC and all federal agencies create streamlined and reasonable NEPA regulations.

The FCC should create a categorical exclusion for communication projects that are being installed in an area that has already undergone a NEPA review. When fiber is being laid in an existing right of way, there is no need to do a second NEPA review.

As BEAD funding nears after years of waiting, it is vital that the FCC uses its powers to ease the regulatory burdens. Small government jurisdictions are likely spots for most of the BEAD funding. Creating a categorical exclusion for projects in existing corridors would ensure these funds are efficiently allocated and not wasted by unduly long and burdensome delays due to NEPA.

III. Conclusion

Advocacy urges the FCC and other federal agencies implementing NEPA to ensure coordination during NEPA reviews, create firm and reasonable timelines for NEPA reviews, narrow the scope of major federal actions to exempt routine deployments that the FCC acts as “generalized control *qua* regulator,”²⁶ and create new categorical exclusions that will allow for small rural communities to have improved communications services.

Advocacy commends the FCC for seeking public comments when modernizing the agency’s NEPA rules. Small entities request the FCC to incorporate these recommendations into the FCC’s final NEPA rule or properly respond to these concerns.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel David Mullis at (202) 830-2292 or by email at david.mullis@sba.gov.

Sincerely,

/s/

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/s/

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²⁶ *Id.* at 10.

Copy to: Mr. Jeffrey Clark, Sr., Acting Administrator
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