National Trust *for* Historic Preservation®

October 3, 2025

Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

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Re: Reply Comments on Modernizing the Commission's NEPA Rules FCC 25-217; 90 Fed. Reg. 40,295 (Aug. 19, 2025)

These reply comments are submitted on behalf of the National Trust for Historic Preservation in the United States, in response to the Notice of Proposed Rulemaking by the Federal Communications Commission (FCC) regarding the agency's regulations for compliance with the National Environmental Policy Act (NEPA). Our original comments were submitted on September 18, 2025.

Facilities Constructed Pursuant to Geographic Area Licenses are Major Federal Actions.

Although the NEPA definition of "major federal action" is now limited to actions "subject to substantial Federal control and responsibility," 42 U.S.C. § 4336e(10)(A), the Commission's issuance of Geographic Area Licenses satisfies this definition. The Commission must make an affirmative finding that issuance of the license will serve the "public interest, convenience, and necessity," 47 U.S.C. § 309(a), and these licenses include strict build-out requirements in order to ensure that the public interest will be served. Thus the Commission has "substantial Federal control and responsibility" over the licensees' compliance and implementation of those build-out requirements. The Commission should continue its current practice of treating facilities constructed pursuant to Geographic Area Licenses as "major federal actions" under NEPA.

Major Federal Actions and Undertakings Are Not "Coterminous".

The statutory language on its face makes it clear that the definitions of "major federal action" in NEPA and "undertaking" in the National Historic Preservation Act (NHPA) are not "coterminous," as the CTIA has argued. NEPA requirements are only triggered in response to "*major* Federal actions *significantly* affecting the quality of the human environment," 42 U.S.C. 4332(2)(C) (emphasis added). The new language discussed above narrows this definition even further to actions "subject to *substantial* Federal control and responsibility," *id.* § 4336e(10)(A) (emphasis added). By contrast, Section 106 applies to all agencies "having direct *or indirect* jurisdiction over a proposed Federal *or federally assisted undertaking*," as well as agencies "having authority to *license* any undertaking," and is not limited to "significant" effects. 54 U.S.C. § 306108 (emphasis added). The

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regulations explicitly require consideration of "reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative." 36 C.F.R. § 800.5(a)(1). Accordingly, the Commission must ensure that the constraints imposed on the scope of its review under NEPA are not applied to its review under Section 106 of the NHPA.

The Commission's Regulations Are Efficient and Not in Need of Further Streamlining.

Although the Commission's Chairman has expressed concerns about the perceived burdensome requirements of NEPA compliance on licensees, the Commission's actual track record does not support these allegations. For example, the Commission has apparently *never* required a licensee to prepare a full Environmental Impact Statement.[1] Even the preparation of Environmental Assessments is relatively limited, because of the fact that the Commission has developed a tailored list of categorical exclusions, with limited exceptions for "extraordinary circumstances." 47 C.F.R. § 1.1307(a).

In addition to these comments, we also support the comments that have been submitted by the National Conference of State Historic Preservation Officers, the National Association of Tribal Historic Preservation Officers, and the American Cultural Resources Association. Thank you in advance for considering these comments, and we remain willing to serve as a resource during the ongoing process of developing revised regulations.

Sincerely,

Elizabeth S. Merritt
Deputy General Counsel

[1] *See* Environmental Health Trust, Questions and Answers on the FCC NEP Process (available at https://ehtrust.org/question-and-answers-on-the-fcc-nepa-process).