ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

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COMMENTS OF ITIF

Before the

Federal Communications Commission

Washington, D.C.

In the Matter of:	)	
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	)	RM-12003
CTIA Petition for Rulemaking	)	
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April 30, 2025

ITIF appreciates the opportunity to respond to the Commission's request for comments on CTIA's Petition for Rulemaking regarding the Commission's rules for implementing the National Environmental Policy Act (NEPA).[1] There are sound legal and policy reasons for the Commission to update its NEPA rules, so it should grant the petition.

The Fiscal Responsibility Act of 2023 (FRA) changed agencies' relationship with NEPA, and the Commission must ensure its rules comply with the law. Notably, the FRA clarifies that Major Federal Actions (MFAs) are only those over which an agency exercises "substantial Federal control and responsibility."[2] The Commission should comprehensively review its NEPA processes to ensure they always satisfy this requirement.

For example, deployment of radio equipment pursuant to a spectrum license is unlikely to constitute an action under the FCC's substantial control since the Commission's oversight of the deployment itself is minimal. While the Commission is substantially involved in issuing the license in the first place, that oversight of who may use the spectrum and how does not extend to substantially controlling the physical deployment of infrastructure to operate in accordance with that license. The Commission should hew narrowly to the statute rather than pushing the limits of its jurisdiction, particularly in the light of the Supreme Court's recent holdings that limit agency discretion over statutory interpretation.[3]

Moreover, there are strong policy reasons to believe an expansive view of NEPA authority results in net public-interest harms. ITIF has previously detailed how onerous NEPA requirements have delayed or scuttled clean energy deployment.[4] Rather imitating this mistake by imposing itself as a similar hurdle in the deployment of advanced broadband networks, the Commission should look for ways to reduce barriers to consumer access to next generation services.

Consumers benefit from the rapid deployment and scaling of advanced communications networks. As in other fields, NEPA review of communications infrastructure deployment can be duplicative and slow, with minimal environmental benefits. Broadband networks are especially susceptible to the harms imposed by overzealous NEPA processes since they require rapid upgrades and deployments to realize the benefits of cutting-edge technology.

Enabling rapid deployment of wireless services also enhances the competitive environment for fixed and mobile broadband services. Wireless networks that require the deployment of many network elements will be hamstrung in competition with other broadband technologies that are not subject to as many NEPA hurdles. Forgoing the benefits of more competition to pursue regulatory adventurism is a bad trade for consumers.

Instead, the Commission should embrace the rise of competing broadband technologies and enable their deployment to provide better quality service and more choices for more people. Rather than letting NEPA prop open the digital divide, the Commission should look for instances in which its NEPA processes have gone too far and remove them.

Congress, through the FRA, has recognized that NEPA has spilled out of any reasonable boundaries and is trying to rein it in. Therefore, good policy sense and compliance with the will of Congress require the

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

[2] Fiscal Responsibility Act of 2023 § 321(b) (42 U.S.C. § 4336e(10)(A))

[3] *See e.g.,* Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024).

[4] Stefan Koester, "To Innovate, We Need To Build: Permitting Reform Is Innovation Policy," *ITIF*, September 23, 2022, https://itif.org/publications/2022/09/23/to-innovate-we-need-to-build-permitting-reform-is-innovation-policy/.

Commission to narrow the scope of its NEPA review, not defend its current expansive reach. A rulemaking on that topic is a good place to start.

Thank you for your consideration.

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