[ORAL ARGUMENT NOT YET SCHEDULED]

No. 18-1129 [Consolidated with 18-1135, 18-1148, 18-1159, 18-1184]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA, INDIVIDUALLY AND ON BEHALF OF ALL OTHER NATIVE AMERICAN INDIAN TRIBES AND TRIBAL ORGANIZATIONS, et al.,
Petitioners,
v.
FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES of AMERICA,
Respondents,

NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS, et al.,
Intervenors.

PETITION FOR REVIEW OF FINAL ORDER OF THE FEDERAL COMMUNICATIONS COMMISSION

OPENING BRIEF OF PETITIONER NATURAL RESOURCES DEFENSE COUNCIL AND INTERVENOR EDWARD B. MYERS

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January 25, 2019

CERTIFICATE OF PARTIES, RULINGS AND RELATED CASES

Petitioner Natural Resources Defense Council ("NRDC") and Intervenor Edward B. Myers incorporate by reference the Certificate of Parties, Rulings, and Related Cases in the brief of Petitioners United Keetoowah Band of Cherokee Indians et al.

CORPORATE DISCLOSURE STATEMENT

Pursuant to the United States Court of Appeals for the District of Columbia Rule 26.1 and Federal Rule of Appellate Procedure 26.1, Natural Resources Defense Council respectfully states that it is a non-profit corporation with no parent companies, subsidiaries or affiliates and has not issued shares to the public. Edward B. Myers is a private citizen and has not issued any shares to the public.

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TABLE OF CONTENTS

STATEMENT OF JURISDICTION viii

STATUTES AND REGULATIONS viii

ISSUES PRESENTED FOR REVIEW viii

STATEMENT OF THE CASE 1

Statute and Regulatory Framework 1

I. NEPA 1

II. Communications Act 2

Factual Background 3

SUMMARY OF THE ARGUMENT 5

STANDING 6

STANDARD OF REVIEW 8

ARGUMENT 10

I. The FCC Order Violates NEPA. 10

A. The FCC Failed to Complete Any NEPA Analysis Before Issuing its Order. 10

B. The FCC Cannot Avoid NEPA Analysis for Use of the Spectrum that it Has Licensed. 11

II. The FCC's Public Interest Analysis is Arbitrary and Capricious 15

CONCLUSION 17

EXHIBIT A – Declaration of Warren Betts

EXHIBIT B – Declaration of Edward B. Myers

ADDENDUM: STATUTES AND REGULATIONS

TABLE OF AUTHORITIES

Cases

Am. Bird Conservancy v. FCC, 516 F.3d 1027 (D.C. Cir. 2008) 14

Am. Wild Horse Pres. Campaign v. Perdue, 873 F.3d 914 (D.C. Cir. 2017) 16

Am. Horse Prot. Ass'n v. Lyng, 812 F.2d 1 (D.C. Cir. 1986) 16

Andrus v. Sierra Club, 442 U.S. 347 (1979) 15

Balt. Gas and Electric Co. v. Nat. Res. Def. Council, 462 U.S. 87 (1983) 2

Booth v. Churner, 532 U.S. 731 (2001) 14

Chevron, U.S.A, Inc. v. Nat. Res. Def. Council, 467 U.S. 837 (1984) 9

CTIA-Wireless Ass'n v. FCC, 466 F.3d 105 (D.C. Cir. 2006) 15

Dania Beach v. Federal Aviation Administration, 485 F.3d 1181 (D.C. Cir. 2007) 6, 7

Dep't of Transp. v. Public Citizen, 541 U.S. 752 (2004) 2, 15

Grand Canyon Trust v. Fed. Aviation Admin., 290 F.3d 339, 341–42 (D.C.Cir.2002) 9

Humane Society of the United States v. Johanns, 520 F. Supp. 2d 8 (D.D.C. 2007) 9

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) 9

Marsh v. Or. Nat. Res. Council, 490 U.S. 360 (1989) 1

Mobile Relay Assoc.s v. FCC, 457 F.3d 1 (D.C. Cir. 2006) 9

New York v. Nuclear Regulatory Comm'n, 681 F.3d 471 (D.C. Cir. 2012) 2, 8, 9, 12, 15

Oglala Sioux Tribe v. Nuclear Regulatory Comm'n, 896 F.3d 520 (D.C. Cir. 2018) 2

Sierra Club & La. Envtl. Action Network v. EPA, 755 F.3d 968 (D.C. Cir. 2014) 8

Washington Utilities and Transp. Comm'n v. FCC, 513 F.2d 1142 (9th Cir. 1975) 13, 14

Statutes

5 U.S.C. § 706(2)(A) 8

42 U.S.C. § 4332(C) 10

47 U.S.C. § 301 ..... 3, 13

47 U.S.C. § 307 ..... 3, 13

47 U.S.C. § 309 ..... 3, 13, 16

47 U.S.C. § 319 3

Regulations

40 C.F.R. § 1500.1(b) 2

40 C.F.R. § 1502.22 2

40 C.F.R. § 1502.24 2

40 C.F.R. § 1507.3(b)(2) 4

40 C.F.R. § 1508.18(a) 10

47 C.F.R. § 1.903 ..... 2, 3, 14

47 C.F.R. § 1.1302 11

47 C.F.R. § 1.1306 5

47 C.F.R. § 1.1307 ..... 3, 5

47 C.F.R. § 1.1312 15

Other Authorities

FCC Order 18-30, In re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (04/26/18, as amended from 03/30/18) 1, 14

FCC, *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 30 FCCRcd 31 (2014)..... 5

Human Exposure to Radiofrequency Electromagnetic Fields, 78 Fed. Reg. 33634 (June 4, 2013) 3, 11

Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, 81 Fed. Reg. 58270 (Aug. 24, 2016)..... 3

U.S. Government Accountability Office, GAO 12-771, *Telecommunications: Exposure and Testing Requirements for Mobile Phones Should be Reassessed* (2012) 3

GLOSSARY

APA	Administrative Procedure Act
CEQ	Council on Environmental Quality
EIS	Environmental Impact Statement
FCC	Federal Communications Commission
GHz	Gigahertz
NEPA	National Environmental Policy Act
NRDC	Natural Resources Defense Council
NRC	Nuclear Regulatory Commission
RF	Radiofrequency
WCD	Waste Confidence Decision

STATEMENT OF JURISDICTION

Petitioner NRDC and Intervenor Myers incorporate by reference the Statement of Jurisdiction in the brief of Petitioners United Keetoowah Band of Cherokee Indians et al.

STATUTES AND REGULATIONS

The pertinent provisions of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321, *et seq.*, the Communications Act, 47 U.S.C. §151, *et seq.*, and implementing regulations are set forth in the Addendum.

ISSUES PRESENTED FOR REVIEW

1. Whether the Federal Communications Commission ("FCC" or "Commission") failed to complete environmental analysis required by NEPA before issuing the challenged Order.

2. Whether the FCC can lawfully avoid NEPA analysis for use of the electromagnetic spectrum that it has licensed.

3. Whether the FCC's determination that it has met the public interest standard of the Communications Act is arbitrary and capricious.

STATEMENT OF THE CASE

In its rush to deliver wireless service, the FCC has unlawfully disregarded its responsibilities to consider environmental impacts under NEPA by eliminating review for hundreds of wireless facilities planned across the country. JA 806 [FCC Order 18-30, In re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (04/26/18, as amended from 03/30/18)] ("Order"). The Order violates NEPA in two ways. First, the Order itself is a major federal action, but the Commission performed no NEPA analysis at all before issuing it. Second, the Order impermissibly excludes thousands of wireless facilities from NEPA review despite the FCC license needed to operate such facilities. Moreover, by eliminating all environmental review, the Commission cannot meet its obligation to act in the public interest under the Communications Act.

STATUTORY AND REGULATORY FRAMEWORK

I. NEPA

NEPA is an action-forcing statute applicable to all federal agencies. Its commitment is to "prevent or eliminate damage to the environment . . . by focusing government and public attention on the environmental effects of proposed agency action." *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989) (internal quotations omitted). The statute requires "that the agency will inform the public

that it has indeed considered environmental concerns in its decision-making process." *Balt. Gas and Electric Co. v. NRDC*, 462 U.S. 87, 97 (1983).

NEPA's implementing regulations require agencies to "insure the professional integrity, including scientific integrity, of the [agency's] discussions and analyses…." 40 C.F.R. §1502.24. Where data is not presented in the NEPA document, the agency must justify not obtaining that data. 40 C.F.R. §1502.22.

NEPA is designed to ensure that agencies look before they leap. NEPA established the Council on Environmental Quality ("CEQ") "with the authority to issue regulations interpreting it." *New York v. Nuclear Regulatory Commission*, 681 F.3d 471, 476 (D.C. Cir. 2012), quoting *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 757 (2004). CEQ regulations require that "environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. §1500.1(b). *See Oglala Sioux Tribe v. Nuclear Regulatory Comm'n*, 896 F.3d 520 (D.C. Cir. 2018).

II. Communications Act

Under Title III of the Communications Act, the FCC regulates use of spectrum that makes wireless communication possible. The FCC's regulations require that "[s]tations in Wireless Radio Services . . . be used and operated . . . with a valid authorization granted by the Commission under the provisions of this part. . . ." 47 C.F.R. §1.903. Services such as those at issue here must obtain an

FCC license. 47 U.S.C. §§301, 307, 309; 47 C.F.R. §1.903 In addition, a construction permit is sometimes required before a facility can be built. 47 U.S.C. §319. Wireless facilities must also comply with FCC regulations limiting human exposure to radiofrequency (RF) emissions. 47 C.F.R. §1.1307(b).

FACTUAL BACKGROUND

As AT&T, T-Mobile, and Verizon all attest, telecommunications companies plan to deploy hundreds of thousands of new "small" wireless facilities in communities across the United States. JA 260, 399, 410-11. These wireless facilities will employ high frequency millimeter wave spectrum in direct line-of-sight to residences. JA 411-12. The FCC, without any health and safety review, has only recently permitted the use of such spectrum. Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, 81 Fed. Reg. 58270 (Aug. 24, 2016).

The health and safety standards for these emissions were promulgated in 1996 based largely on standards developed in 1992. JA 972. The GAO in 2012 found that the existing standards may not reflect current knowledge and recommended that the FCC formally reassess the standards. JA 953 [GAO, *Telecommunications: Exposure and Testing Requirements for Mobile Phones Should be Reassessed* (GAO 12-771)(2012)]. The Commission opened a proceeding to reassess the standards in 2013. Human Exposure to Radiofrequency Electromagnetic Fields, 78 Fed. Reg. 33634 (June 4, 2013).

Rather than complete its health and safety proceeding, the FCC has eliminated NEPA's environmental review. JA 808. The Commission's Order excludes an entire class of what it calls "small" wireless facilities from its NEPA regulations. The excluded facilities include towers up to 50 feet tall, antennas, and associated equipment. JA 878. Towers could rise significantly above 50 feet if they expand an existing tower by 10 percent or less. *Id*.

NEPA imposes a specific process on federal agencies. Each agency must identify major federal actions that *will* have a significant effect on the environment and prepare an Environmental Impact Statement for those which do. If a major federal action *may* have a significant effect on the environment, NEPA requires preparation of an Environmental Assessment to determine if an EIS is needed. Agencies can identify those actions that typically do not have a significant effect and categorically exclude them. 40 C.F.R. §1507.3(b)(2).

Until the Order, companies seeking to construct and operate wireless facilities had to determine whether such facilities might have a significant effect on the environment. If certain conditions exist – such as the presence of wetlands, endangered species or historic resources – then the company needed to submit an Environmental Assessment of the potential impacts to the FCC. 47 CFR §1.1307(a).

In 2014, the FCC dramatically expanded the categorical exclusions applicable to wireless facilities and excluded all actions other than those identified in Section 1.1307 from environmental review. FCC, *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 30 FCCRcd 31 (2014)("2014 Order"), ¶11; 47 CFR §1.1306. The FCC relied on CEQ's guidelines for establishing these categorical exclusions. 2014 Order, ¶48 n.121.

Despite the flexibility provided by its 2014 action, the FCC seeks to limit environmental review even further. The challenged Order finds that deployments of "small" wireless facilities do not constitute major federal actions. The Order removes thousands of the new structures that companies plan to construct in communities and public lands across the country from the review previously required under §1.1307. The Commission acknowledges its responsibility to address radiation from wireless services, yet it allows these services to operate without any review of whether its health and environmental standards have been met. JA 821.

SUMMARY OF THE ARGUMENT

The Order violates NEPA in two ways. First, the Order itself was not subject to any kind of NEPA review. As a federal action covered by NEPA, the FCC must conduct an environmental review and it did not. Second, the Order unlawfully excluded the construction of "small" wireless facilities from coverage

under NEPA. By splitting such construction from the issuance of the geographic license under which wireless facilities operate, the FCC has illegally attempted to sidestep its obligations under NEPA. Additionally, the Commission's determination that it has met the public interest standard of Communications Act is arbitrary and capricious.

STANDING

NRDC is a non-profit environmental membership organization with thousands of members nationwide. NRDC and its members participate in various reviews under NEPA to have a voice in advancing effective environmental protection and wise government decision-making. In NEPA cases, "the primary focus of the standing inquiry is not the imminence or redressability of the injury to the plaintiff, but whether a plaintiff who has suffered personal and particularized injury has sued a defendant who has caused that injury." *Dania Beach v. Federal Aviation Administration*, 485 F.3d 1181, 1185–87 (D.C. Cir. 2007) (internal citations and quotation marks omitted). In particular, petitioners need to show that "the government act performed without the procedure in question will cause a distinct risk to a particularized interest of the plaintiff." *Id.*

NRDC's members have suffered injury sufficient for standing. The challenged Order's elimination of NEPA review for numerous wireless facilities eliminates the ability of NRDC members to influence the siting of these facilities

in their communities, as well as on the public lands they enjoy and seek to protect. *See* Declaration of Warren Betts, attached as Exh. A, ¶9. The wireless infrastructure at issue will harm the quiet enjoyment and beauty of the places NRDC members treasure. *Id*., at ¶10.

By eliminating environmental review, the Order also threatens the health of NRDC members. Radiation from telecommunications facilities can trigger headaches and other neurological/neuropsychiatric effects, damage cells in the human body, disrupt hormonal systems, and cause cancer. JA 560, 564-66, 596. The "densification" of wireless transmitters and the possible placement of one or more near NRDC members' homes threatens their health. Betts Declaration, ¶¶18, 19.

Some of the facilities at issue may have little or no impact. But others may have significant impacts either individually or cumulatively. Distinguishing between those with impacts and those without is the point of the NEPA review process. "The procedural requirements of NEPA were designed to protect persons . . . who might be injured by hasty federal actions taken without regard for possible environmental consequences," such as NRDC's members. *Dania Beach*, 485 F.3d at 1185–87. The elimination of such review denies NRDC members the voice and protections that Congress provided them.

Intervenor Edward B. Myers is a citizen of the United States residing in Montgomery County, Maryland. Like the members of NRDC, Mr. Myers will be negatively affected by the deployment of wireless facilities in residential areas and on public lands. Crown Castle International has installed a platform approximately 20 feet from the property line of Mr. Myers' residence. The type of wireless facilities planned for installation near his property are covered by the Order. Declaration of Edward B. Myers, attached as Exh. B, ¶¶4, 6.

A favorable decision from this Court will redress the injuries to NRDC members and Mr. Myers. *See Sierra Club & La. Envtl. Action Network v. EPA*, 755 F.3d 968, 973 (D.C. Cir. 2014). Vacating the Order will restore the application of NEPA and its environmental review and public participation requirements to the siting of "small" wireless facilities, thereby providing a mechanism to mitigate potential environmental effects.

STANDARD OF REVIEW

A reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A). Recognizing the mandate of the Administrative Procedure Act to "set aside" unlawful agency action, the D.C. Circuit vacates orders that violate NEPA. *New York*, 681 F.3d at

473. The same applies to violations of the Communications Act. *Mobile Relay Assoc.s v. FCC*, 457 F.3d 1, 7-8 (D.C. Cir. 2006).

Where an agency's interpretation conflicts with a statute's unambiguous language, the Court shall set the agency action aside. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837, 843 (1984). Where the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. *Id.*

However, the Court owes no deference to the FCC's interpretation of NEPA or CEQ regulations because NEPA is addressed to all federal agencies and Congress did not entrust administration of NEPA to the FCC alone. *See Grand Canyon Trust v. Fed. Aviation Admin.*, 290 F.3d 339, 34-42 (D.C .Cir. 2002); *Humane Society of the U.S. v. Johanns*, 520 F. Supp. 2d 8, 32-33 (D.D.C. 2007). On the other hand, CEQ regulations interpreting NEPA are given judicial deference. *New York*, 681 F.3d at 473 (looking to CEQ's definition of "major federal action" not that of the Nuclear Regulatory Commission).

ARGUMENT

I. The FCC Order Violates NEPA.

A. The FCC Failed to Complete Any NEPA Analysis Before Issuing its Order.

NEPA requires federal agencies to prepare an environmental impact statement ("EIS") before undertaking a "major Federal action[ ] significantly affecting the quality of the human environment." 42 U.S.C. §4332(C). As defined by CEQ, "major federal action" includes the issuance of "new or revised agency rules, regulations, plans, policies, or procedures." 40 C.F.R. §1508.18(a). The FCC's NEPA regulations cross-reference CEQ's regulations. 47 C.F.R. §1.1302. In the challenged Order, the FCC amended its rules, policies, and procedures as to when NEPA reviews would be conducted. Consequently, the Order is a major federal action under CEQ regulations and the agency was required to conduct a NEPA review.

The FCC failed to conduct the review required under NEPA. The challenged Order neither contains nor is accompanied by any analysis of the potential detriments of wireless technology on the human environment. JA 842 ("We do not address here any potential for effects associated with the actual provision of licensed service, such as RF [radiofrequency] issues.").

Further, the Order disregards record evidence documenting the harm to the human environment that cell towers and other wireless infrastructure can cause.

See, e.g., JA 235-38 [BioInitiative Working Group Comments] (identifying numerous scientific studies indicating deleterious health effects of electromagnetic radiation from electric and wireless devices); JA 240-43 [International Appeal of scientists from 41 countries] (urging action against biological and health effects of non-ionizing electromagnetic fields generated by electric and wireless devices); JA 132-228 [Environmental Health Trust Comments].

The Order also disregards the fact that the GAO in 2012 issued a report critical of the stale science behind the FCC's radiofrequency regulations. The FCC itself has acknowledged the inadequacy of those regulations relating:

> [T]he ubiquity of device adoption as well as advancements in technology . . . warrant an inquiry to gather information to determine whether our general regulations and policies limiting human exposure to radiofrequency (RF) radiation are still appropriately drawn.

Human Exposure to Radiofrequency Electromagnetic Field Limits and Policies, 78 Fed. Reg. at 33660. Indeed, the FCC has in the past taken these impacts seriously enough to pursue a (now stalled) update to its environmental standards. *Id*. The Commission's Order, however, disregards these well-documented concerns without explanation or analysis.

B. The FCC Cannot Avoid NEPA Analysis for Use of the Spectrum that It Has Licensed.

The FCC has abdicated the responsibility that Congress has imposed on it. The spectrum is an invaluable national resource and Congress has given the FCC

the duty to manage it in the public interest. While the FCC has significant flexibility in how it reviews such effects, it cannot—as it attempts to do here—avoid review completely.

The FCC attempts to avoid NEPA review by unlawfully separating the wireless services provided by a facility from the facility necessary to provide these services. None of the wireless facilities at issue in the challenged Order can operate without a geographic license from the FCC. JA 839-41. The Commission attempts to argue that issuing "a license that authorizes provision of wireless service in a geographic area" does not constitute sufficient federal control to trigger review of the "particular wireless facilities [proposed for construction] in connection with the license." *Id.*[1]

This Court has rejected such splintering tactics. In *New York*, the Court vacated the Nuclear Regulatory Commission's Waste Confidence Decision ("WCD") intended to support future licensing and relicensing of nuclear power plants. 681 F.3d at 478. The NRC unsuccessfully tried to avoid environmental review by splintering off a WCD prior to the licensing. The Court, however, held that the WCD is a major federal action because it "is a predicate to every decision to license or relicense a nuclear plant." *Id.* at 476.

[1] While ¶85 explicitly addresses application of the National Historic Preservation Act, the FCC uses the same rationale to exclude the wireless facilities at issue from NEPA.

Courts have similarly rejected FCC splintering attempts. In *Washington Utilities and Transp. Comm'n v. FCC*, the Ninth Circuit stated

> The Commission is required "to consider environmental values 'at every distinctive and comprehensive stage of the (agency's) process.' The primary and nondelegable responsibility for fulfilling that function lies with the Commission."

513 F.2d 1142, 1167 (9th Cir. 1975), *abrogated on other grounds by Booth v. Churner*, 532 U.S. 731, 741 n. 6 (2001). *See also Washington Utilities*, 513 F.2d at 1168 ("The FCC must consider 'the environmental impact of the proposed action' as a whole, and in full context. It cannot treat each application separately from the others and ignore the total program of which it is a part.") (quoting CEQ guidelines). Here, the FCC engages in the same segregation that this court and others have found unlawful by trying to split off the later decision regarding construction of facilities to provide wireless services from the earlier licensing of the services.

The FCC's action here is even more egregious than the NRC's action that this Court invalidated. In the NRC case, subsequent environmental review would occur. Here, the challenged Order allows deployment of thousands of wireless facilities across the country without *any* environmental review under NEPA at all. The record contains no evidence that the FCC conducted any NEPA analysis when it issued the geographic licenses, and now the FCC is eliminating NEPA review

that it previously conducted prior to construction. Such unilateral action by the FCC to remove itself from the application of NEPA is beyond the authority that Congress has given it. *Am. Bird Conservancy v. FCC*, 516 F.3d 1027, 1033 (D.C. Cir. 2008).

The FCC argues that it "does not subject many types of wireless facilities to environmental and historic preservation compliance procedures," FCC Order ¶7, and cites "consumer signal boosters, Wi-Fi routers and unlicensed equipment used by wireless Internet service providers" as examples. *Id*. None of these, however, require a license from the FCC.

The Commission also mistakenly states that the construction authorization under §1.1312 from which "small" wireless facilities are exempt is "the only basis . . . for treating such deployments [of small wireless facilities] as undertakings or major federal actions subject to NHPA and NEPA review." JA 820. This ignores the geographic license under which these facilities operate, which serves as a basis for NEPA review. The absence of a construction permit does not erase the authorization that the FCC's own rules require it to provide all wireless services before they operate. 47 C.F.R. §1.903.

The FCC does not get to decide on its own what does and doesn't have an environmental effect. NEPA and its implementing regulations impose a specific process for assessing environmental effects and the FCC has not followed it.

New York, 681 F.3d at 476 (noting that NEPA established CEQ "with the authority to issue regulations interpreting it") (quoting *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 757 (2004)); *see also CTIA-Wireless Ass'n v. FCC*, 466 F.3d 105, 115 (D.C. Cir. 2006) (citing Supreme Court deference to CEQ interpretation of NEPA in *Andrus v. Sierra Club*, 442 U.S. 347, 358 (1979)).

II. The FCC's Public Interest Analysis is Arbitrary and Capricious.

The FCC is required to ensure that its actions are consistent with the public interest. 47 U.S.C. §309. In its Order, the FCC acknowledges that environmental considerations, including the protection of life and property, are part of its core mission under the Communications Act. JA 821. The Order nevertheless concludes that elimination of environmental review of so-called "small" wireless facilities is consistent with the public interest because, due to their size relative to towers 200 feet or more in height, such facilities pose little to no environmental risk. JA 818, 820.

Relying on unsubstantiated assertions by telecommunication companies, the FCC also finds that the cost of conducting individual environmental reviews will outweigh the benefits. JA 807. Missing from the Order is any consideration of the record evidence of negative environmental impacts. "'Facts are stubborn things.' But record facts are the grist of reasoned agency decisionmaking." *Am. Wild*

Horse Pres. Campaign v. Perdue, 873 F.3d 914, 932 (D.C. Cir. 2017). Like the Forest Service in *American Wild Horse*, the FCC here has brushed the facts aside.

The Order fails to consider the potential cumulative environmental impacts from the large number of planned wireless facilities, especially when deployed in residential communities. Nor does it evaluate what alternative mitigating measures might be taken to reduce these impacts. Instead, the Commission frankly states that it is not going to examine any evidence of potential environmental impacts, even while it voices concern about the cost of deploying "small" wireless facilities. JA 842.

The Commission has discretion to construe the public interest in the context of the Communications Act, but that discretion only goes so far. It does not extend to willfully ignoring relevant evidence of environmental impacts and continuing to rely on stale scientific knowledge. *Am. Horse Prot. Ass'n v. Lyng*, 812 F.2d 1, 5-7 (D.C. Cir. 1986) (holding agency's action arbitrary and capricious for failure to consider an intervening study about inhumane treatment of horses).

CONCLUSION

Based on the foregoing, Petitioner NRDC and Intervenor Myers request that the Court grant NRDC's petition for review and vacate the challenged FCC Order and remand the matter to the Commission to comply with its statutory duties.

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January 25, 2019

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because this document contains 3,451 words.
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/s/ Sharon Buccino

Attorney for Natural Resources Defense Council

Dated: January 25, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2019, I electronically filed the foregoing Final Opening Brief of Petitioner Natural Resources Defense Council and Intervenor Edward B. Myers with attached Exhibits A and B, along with the Statutory and Regulatory Addendum with the Clerk of the Court for the United States Court of Appeals for the District of Columbia by using the Court's CM/ECF system. Required hard copies of the briefs were delivered to the Court via messenger. I further certify that service was accomplished on all participants in the case via the Court's CM/ECF system.

/s/ Sharon Buccino

Attorney for Natural Resources Defense Council

Dated: January 25, 2019

Exhibit A

Declaration of Warren Betts

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA, *et al.*,	)	
Petitioners,	)	Case No. 18-1129 Case No. 18-1135 Case No. 18-1148
v.	)	Case No. 18-1159 Case No. 18-1184
UNITED STATES FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA	)	
Respondents.	)	

DECLARATION OF WARREN BETTS

I, WARREN BETTS declare as follows:

1. I am currently a member of the Natural Resources Defense Council (NRDC), and have been a member for about eight years.

2. I live in Sierra Madre, California. I have lived there for about eighteen years.

3. I support NRDC's efforts to protect human health and the environment, including efforts to ameliorate aesthetically harmful and potentially damaging sources of radiation. I believe that access to clean and safe communities is crucial to living a normal, healthy life.

4. I understand that, as telecommunications companies begin to implement 5G, they will construct hundreds of thousands of new "small cell" towers, such as the ones that have already been sited in Sierra Madre, and that these small cell towers will emit substantial amounts of non-ionizing radiation.

5. I am very worried that more small cells will be sited near where I live, as I understand from what I've read that these small cells are going to be located every couple hundred feet, in order to implement 5G.

6. I believe that these small cells (and their construction) will have significant negative effects on my quality of life.

7. My home, Sierra Madre, is a beautiful, peaceful place. I moved here because it is woodsy, quiet, and close to the mountains. In recent years, unfortunately, it has gotten somewhat more crowded and there has been more construction.

8. I fear that, without environment or historical review, telecommunications companies will be able to deploy immense numbers of small cells all around the country much more easily and rapidly, almost certainly constructing more in Sierra Madre.

9. While I do not know of exact plans to site more small cells and other wireless facilities in Sierra Madre, I have read press reports about plans to site thousands of small cells all over California. Further, I cannot know where these structures will be sited because the FCC stopped requiring companies to provide public notice or an opportunity for members of the public to comment on new small cells.

10. This construction will further harm this tranquil community that I love so much. In order to construct these small cells, ground will be dug up to lay cables; wetlands will be sullied or destroyed; and trees could be cut down. This harm to the home that I love would be irreversible. The beauty and serenity of Sierra Madre will be sullied.

11. The quiet of the mountains and woods will be disrupted by the construction and operation of these small cells—by the laying of cables and wires, by the maintenance they require, by the sound of the maintenance vehicles.

12. The immense deployment of small cells also threatens to harm the local forests where I enjoy hiking and spending quiet hours. I worry that trees may be cut down or damaged by the construction of small cells in such places as Mountain Trail, Mount Wilson Trail and the Canyon area.

13. I travel to these areas quiet frequently, perhaps daily, and I plan to continue going to these places if they are not damaged.

14. I know the effects of small cells firsthand. Some time ago, a small cell tower was constructed approximately one mile from my home, by a Catholic Church.

15. This small cell is on a pole 15 or 20 feet above the ground. Several feet below the antenna is a large gray utility box.

16. I find this small cell unpleasant to look at. It is very ugly and intimidating and emits an electronic sound that I find menacing to people or to birds.

17. I also understand that cell phones and cell towers emit non-ionizing radiation, which numerous studies have linked to all manner of human health problems, including miscarriages and cancer.

18. I believe that the radiation emitted by these small cells will increase the risk of harm to my health, based on what I've read and conversations I've had with physicians.

19. Two years ago, I was diagnosed with multiple myeloma. My physician told me that one contributing factor in causing my myeloma could have been the 16 years I spent

sitting next to a wireless router in my work as a publicist in the film industry. (I have since gotten rid of the wireless router.)

20. I worry that this small cell, near the Catholic Church, poses a substantial risk to my health. I have read a lot about the potential harm posed by cellular radiation, such as the kind emitted from small cells.

21. On the World Health Organization's website, I've read that cellular radiation is linked to leukemia in children.

22. This fear has made me less comfortable walking by this small cell. Nonetheless, I walk this way perhaps twice or three times a week. I very much enjoy walking through my area; this ability to walk around and enjoy the community was part of what drew me to Sierra Madre.

23. I plan to continue regularly walking on this route, or near it, in the future.

24. I am aware that in 2018, the Federal Communications Commission exempted the construction of small cells from environmental and historic review (under NEPA and NHPA).

25. I understand that this will likely mean more small cells will be sited in my community, some even closer to my home, and these will make my community uglier and pose a further risk to my health.

26. I understand that if FCC were to mandate that the deployment of small cells undergo review, as they have done for years, scientists could study and quantify the health and environmental risks posed by small cells.

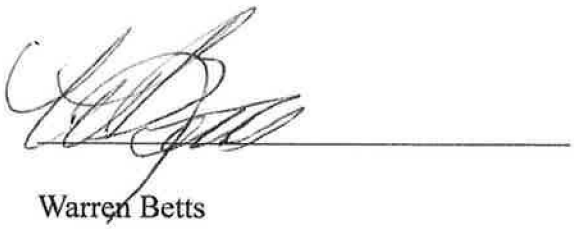
27. I understand that NRDC is suing FCC to compel the commission to require the normal environmental and historic reviews.

28. I believe it is FCC's job to follow the law and ensure that new technology will not pose a risk to my health, the health of my neighbors and community members, or the environment.

29. If the FCC followed the law, I would feel safer and less at risk for negative health repercussions and aesthetic harm.

30. For all of the reasons stated above, I fully support NRDC in this matter.

I declare under penalty of perjury that the foregoing is true and correct.



Warren Betts

7-20-18

Date

Exhibit B

Declaration of Edward B. Myers

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA, et al.,	)	
	)	Case No. 18-1129
Petitioners,	)	Case No. 18-1135
v.	)	Case No. 18-1148
	)	Case No. 18-1159
FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES of AMERICA,	)	Case No. 18-1184
Respondents.	)	

DECLARATION OF EDWARD B. MYERS, INTERVENOR

I, Edward B. Myers, declare as follows:

1. I am an intervenor in the above-referenced matter before this Court. The Court granted my motion to intervene on August 7, 2018.

2. I live in North Potomac, Montgomery County, Maryland in a residential development known as "Flints Grove" and have lived there since 1991.

3. The County Council of Montgomery County, Maryland is presently considering a Zoning Text Amendment to establish criteria for permitting the deployment of wireless facilities in residential communities, including the community in which I reside.

4. Crown Castle International Corporation (Crown Castle), an owner and operator of cell towers, apparently acting on its own or through affiliated entities, has installed a platform marked with its corporate name approximately 20 feet from the property line of my residence.

5. On knowledge and belief, I understand that the described platform is part of the planned deployment of hundreds of thousands of wireless facilities proposed by telecommunications carriers as part of a "densification" process to bring new wireless services to all parts of the United States.

6. I also understand on information and belief that the type of wireless facilities planned for installation near my property, as described in paragraph 4 above, is addressed by the Order of the Federal Communications Commission challenged in this proceeding.

7. I understand on information and belief that the wireless facilities planned for installation near my property will emit a high frequency radiation and that no agency of government has reviewed these types of facilities for likely impacts on health and safety.

8. I also understand that there is a substantial body of peer-reviewed scientific studies showing that the high frequency radiation from the proposed wireless facilities is dangerous to human health and safety.

9. If Crown Castle or others install a functioning wireless cell tower, including antennae and associated equipment, on the above-described platform near my property, the cell tower will directly affect the quality of my life and quiet enjoyment of my home, the value of my property, and my health and safety.

10. If, in addition to the wireless cell tower described above, additional wireless cell towers, including a antennae and associated equipment, are installed on the street in which I reside and/or in the associated Flints Grove residential development as part of a planned "densification" program, as described in the Order challenged in this proceeding, it will irretrievably and negatively alter the Flints Grove community, thereby negatively affecting the quality of my life and health and my quiet enjoyment of common areas in my community open to the public.

11. Deployment of the wireless cell towers described above in other areas of great scenic beauty across the United States will similarly negatively affect the character of those areas and disrupt my enjoyment of those areas and create a risk to my health and safety.

12. I have intervened in this proceeding in order to correct for the fact that the FCC has issued an Order eliminating environmental reviews of the proposed wireless facilities.

I declare that the foregoing is true and correct.

Edward B. Myers

Dated: October 12, 2018

STATUTORY AND REGULATORY ADDENDUM

Opening Brief of Petitioner Natural Resources Defense Council and Intervenor Edward B. Myers

TABLE OF CONTENTS

Statutes **1**
5 U.S.C. § 706 1
42 U.S.C. § 4332 1
47 U.S.C. § 301 1
47 U.S.C. § 307 2
47 U.S.C. § 309 4
47 U.S.C. § 319 4
Regulations **5**
40 C.F.R. § 1500.1 5
40 C.F.R. § 1502.22 6
40 C.F.R. § 1502.24 6
40 C.F.R. § 1507.3 7
40 C.F.R. § 1508.18 7
47 C.F.R. § 1.903 7
47 C.F.R. § 1.1302 8
47 C.F.R. § 1.1306 8
47 C.F.R. § 1.1307 9
47 C.F.R. § 1.1312 11

Statutes

5 U.S.C. § 706

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

. . . .

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

42 U.S.C. § 4332

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

. . . .

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

47 U.S.C. § 301

It is the purpose of this chapter, among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of

energy or communications or signals by radio (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States (except as provided in section 303(t) of this title); or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter.

47 U.S.C. § 307

(a) Grant

The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this chapter, shall grant to any applicant therefor a station license provided for by this chapter.

(b) Allocation of facilities

In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

(c) Terms of licenses

(1) Initial and renewal licenses

Each license granted for the operation of a broadcasting station shall be for a term of not to exceed 8 years. Upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed 8 years from the date of expiration of the preceding license, if the Commission finds that public interest, convenience, and necessity would be served thereby. Consistent with the foregoing provisions of this subsection, the Commission may by rule prescribe the period or periods for which licenses shall be granted and renewed for particular classes of stations, but the Commission may not adopt or follow any rule which would preclude it, in any case

involving a station of a particular class, from granting or renewing a license for a shorter period than that prescribed for stations of such class if, in its judgment, the public interest, convenience, or necessity would be served by such action.

(2) Materials in application

In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings.

(3) Continuation pending decision

Pending any administrative or judicial hearing and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405 or section 402 of this title, the Commission shall continue such license in effect.

(d) Renewals

No renewal of an existing station license in the broadcast or the common carrier services shall be granted more than thirty days prior to the expiration of the original license.

(e) Operation of certain radio stations without individual licenses

(1) Notwithstanding any license requirement established in this chapter, if the Commission determines that such authorization serves the public interest, convenience, and necessity, the Commission may by rule authorize the operation of radio stations without individual licenses in the following radio services: (A) the citizens band radio service; (B) the radio control service; (C) the aviation radio service for aircraft stations operated on domestic flights when such aircraft are not otherwise required to carry a radio station; and (D) the maritime radio service for ship stations navigated on domestic voyages when such ships are not otherwise required to carry a radio station.

(2) Any radio station operator who is authorized by the Commission to operate without an individual license shall comply with all other provisions of this chapter and with rules prescribed by the Commission under this chapter.

(3) For purposes of this subsection, the terms “citizens band radio service”, “radio control service”, “aircraft station” and “ship station” shall have the meanings given them by the Commission by rule.

(f) Areas in Alaska without access to over the air broadcasts

Notwithstanding any other provision of law, (1) any holder of a broadcast license may broadcast to an area of Alaska that otherwise does not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery even if another holder of a broadcast license begins broadcasting to such area, (2) any holder of a broadcast license who has broadcast to an area of Alaska that did not have access to over the air broadcasts via translator, microwave, or other alternative signal delivery may continue providing such service even if another holder of a broadcast license begins broadcasting to such area, and shall not be fined or subject to any other penalty, forfeiture, or revocation related to providing such service including any fine, penalty, forfeiture, or revocation for continuing to operate notwithstanding orders to the contrary.

47 U.S.C. § 309

(a) Considerations in granting application

Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which section 308 of this title applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

47 U.S.C. § 319

(a) Requirements

No license shall be issued under the authority of this chapter for the operation of any station unless a permit for its construction has been granted by the Commission. The application for a construction permit shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and the financial, technical, and other ability of the applicant to construct and operate the station, the ownership and location of the proposed station and of the station or stations with which it is proposed to communicate, the frequencies desired to be used, the hours of the day or other periods of time during which it is proposed to operate the station, the purpose for which the station is to be used, the type of transmitting apparatus to be used, the power to be used, the date upon which the station is expected to be completed and in operation, and such other information as the Commission may require. Such application shall be signed by the applicant in any manner or form, including by electronic means, as the Commission may prescribe by regulation.

(b) Time limitation; forfeiture

Such permit for construction shall show specifically the earliest and latest dates between which the actual operation of such station is expected to begin, and shall provide that said permit will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, unless prevented by causes not under the control of the grantee.
(c) Licenses for operation
Upon the completion of any station for the construction or continued construction of which a permit has been granted, and upon it being made to appear to the Commission that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest, the Commission shall issue a license to the lawful holder of said permit for the operation of said station. Said license shall conform generally to the terms of said permit. The provisions of section 309(a)-(g) of this title shall not apply with respect to any station license the issuance of which is provided for and governed by the provisions of this subsection.
(d) Government, amateur, or mobile station; waiver
A permit for construction shall not be required for Government stations, amateur stations, or mobile stations. A permit for construction shall not be required for public coast stations, privately owned fixed microwave stations, or stations licensed to common carriers, unless the Commission determines that the public interest, convenience, and necessity would be served by requiring such permits for any such stations. With respect to any broadcasting station, the Commission shall not have any authority to waive the requirement of a permit for construction, except that the Commission may by regulation determine that a permit shall not be required for minor changes in the facilities of authorized broadcast stations. With respect to any other station or class of stations, the Commission shall not waive the requirement for a construction permit unless the Commission determines that the public interest, convenience, and necessity would be served by such a waiver.

Regulations

40 C.F.R. § 1500.1

. . . .
(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert

agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

40 C.F.R. § 1502.22

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

> (a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.
> (b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:
>
> > (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.
>
> (c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the Federal Register on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

40 C.F.R. § 1502.24

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall

identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

40 C.F.R. § 1507.3

. . . .

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

. . . .

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§ 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

40 C.F.R. § 1508.18

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

47 C.F.R. § 1.903

(a) General rule. Stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part, except as specified in paragraph (b) of this section.

(b) Restrictions. The holding of an authorization does not create any rights beyond the terms, conditions and period specified in the authorization. Authorizations may be granted upon proper application, provided that the Commission finds that the applicant is qualified in regard to citizenship, character, financial, technical and other criteria, and that the public interest, convenience and necessity will be served. See §§ 301, 308, and 309, 310 of this chapter.

(c) Subscribers. Authority for subscribers to operate mobile or fixed stations in the Wireless Radio Services, except for certain stations in the Rural Radiotelephone Service, is included in the authorization held by the licensee providing service to them. Subscribers are not required to apply for, and the Commission does not accept, applications from subscribers for individual mobile or fixed station authorizations in the Wireless Radio Services. Individual authorizations are required to operate rural subscriber stations in the Rural Radiotelephone Service, except as provided in § 22.703 of this chapter. Individual authorizations are required for end users of certain Specialized Mobile Radio Systems as provided in § 90.655 of this chapter. In addition, certain ships and aircraft are required to be individually licensed under parts 80 and 87 of this chapter. See §§ 80.13, 87.18 of this chapter.

47 C.F.R. § 1.1302

A further explanation regarding implementation of the National Environmental Policy Act is provided by the regulations issued by the Council on Environmental Quality, 40 CFR 1500–1508.28.

47 C.F.R. § 1.1306

(a) Except as provided in § 1.1307 (c) and (d), Commission actions not covered by § 1.1307 (a) and (b) are deemed individually and cumulatively to have no significant effect on the quality of the human environment and are categorically excluded from environmental processing.

(b) Specifically, any Commission action with respect to any new application, or minor or major modifications of existing or authorized facilities or equipment, will be categorically excluded, provided such proposals do not:

(1) Involve a site location specified under § 1.1307(a) (1)–(7), or

(2) Involve high intensity lighting under § 1.1307(a)(8).

(3) Result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

(c)(1) Unless § 1.1307(a)(4) is applicable, the provisions of § 1.1307(a) requiring the preparation of EAs do not encompass the construction of wireless facilities, including deployments on new or replacement poles, if:

(i) The facilities will be located in a right-of-way that is designated by a Federal, State, local, or Tribal government for communications towers, above-ground utility transmission or distribution lines, or any associated structures and equipment;

(ii) The right-of-way is in active use for such designated purposes; and

(iii) The facilities would not

(A) Increase the height of the tower or non-tower structure by more than 10% or twenty feet, whichever is greater, over existing support structures that are located in the right-of-way within the vicinity of the proposed construction;

(B) Involve the installation of more than four new equipment cabinets or more than one new equipment shelter;

(C) Add an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater (except that the deployment may exceed this size limit if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable); or

(D) Involve excavation outside the current site, defined as the area that is within the boundaries of the leased or owned property surrounding the deployment or that is in proximity to the structure and within the boundaries of the utility easement on which the facility is to be deployed, whichever is more restrictive.

(2) Such wireless facilities are subject to § 1.1307(b) and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in § 1.1307(b).

47 C.F.R. § 1.1307

(a) Commission actions with respect to the following types of facilities may significantly affect the environment and thus require the preparation of EAs by the applicant (see §§ 1.1308 and 1.1311) and may require further Commission environmental processing (see §§ 1.1314, 1.1315 and 1.1317):

(1) Facilities that are to be located in an officially designated wilderness area.

(2) Facilities that are to be located in an officially designated wildlife preserve.

(3) Facilities that:

(i) May affect listed threatened or endangered species or designated critical habitats; or

(ii) are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by

the Secretary of the Interior pursuant to the Endangered Species Act of 1973.

Note: The list of endangered and threatened species is contained in 50 CFR 17.11, 17.22, 222.23(a) and 227.4. The list of designated critical habitats is contained in 50 CFR 17.95, 17.96 and part 226. To ascertain the status of proposed species and habitats, inquiries may be directed to the Regional Director of the Fish and Wildlife Service, Department of the Interior.

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places (see 54 U.S.C. 300308; 36 CFR parts 60 and 800), and that are subject to review pursuant to section 1.1320 and have been determined through that review process to have adverse effects on identified historic properties.

(5) Facilities that may affect Indian religious sites.

(6) Facilities to be located in floodplains, if the facilities will not be placed at least one foot above the base flood elevation of the floodplain.

(7) Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion). (In the case of wetlands on Federal property, see Executive Order 11990.)

(8) Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to be located in residential neighborhoods, as defined by the applicable zoning law.

(b) In addition to the actions listed in paragraph (a) of this section, Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities, require the preparation of an Environmental Assessment (EA) if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation in excess of the limits in §§ 1.1310 and 2.1093 of this chapter. Applications to the Commission for construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities must contain a statement confirming compliance with the limits unless the facility, operation, or transmitter is categorically excluded, as discussed below. Technical information showing the basis for this statement must be submitted to the Commission upon request. Such compliance statements may be omitted from license applications for transceivers subject to the certification requirement in § 25.129 of this chapter.

47 C.F.R. § 1.1312

(a) In the case of facilities for which no Commission authorization prior to construction is required by the Commission's rules and regulations the licensee or applicant shall initially ascertain whether the proposed facility may have a significant environmental impact as defined in § 1.1307 of this part or is categorically excluded from environmental processing under § 1.1306 of this part.

(b) If a facility covered by paragraph (a) of this section may have a significant environmental impact, the information required by § 1.1311 of this part shall be submitted by the licensee or applicant and ruled on by the Commission, and environmental processing (if invoked) shall be completed, see § 1.1308 of this part, prior to the initiation of construction of the facility.

(c) If a facility covered by paragraph (a) of this section is categorically excluded from environmental processing, the licensee or applicant may proceed with construction and operation of the facility in accordance with the applicable licensing rules and procedures.

(d) If, following the initiation of construction under this section, the licensee or applicant discovers that the proposed facility may have a significant environmental effect, it shall immediately cease construction which may have that effect, and submit the information required by § 1.1311 of this part. The Commission shall rule on that submission and complete further environmental processing (if invoked), see § 1.1308 of this part, before such construction is resumed.

(e) Paragraphs (a) through (d) of this section shall not apply:

(1) To the construction of mobile stations; or

(2) Where the deployment of facilities meets the following conditions:

(i) The facilities are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d), or the facilities are mounted on structures no more than 10 percent taller than other adjacent structures, or the facilities do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(ii) Each antenna associated with the deployment, excluding the associated equipment (as defined in the definition of antenna in § 1.1320(d)), is no more than three cubic feet in volume;

(iii) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and

(iv) The facilities do not require antenna structure registration under part 17 of this chapter; and

(v) The facilities are not located on tribal lands, as defined under 36 CFR 800.16(x); and
(vi) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).