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February 26, 2018

Via ECFS
Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte* Presentation
WT Docket No. 17-79, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; WT Docket No. 16-421, Streamlining Deployment of Small Cell Infrastructure

Dear Ms. Dortch:

T-Mobile submits this *ex parte* filing in strong support of the Commission's proposals to streamline environmental and historic preservation review procedures for the deployment of wireless infrastructure. As discussed below, T-Mobile agrees that the Commission should find that small wireless facilities are not undertakings or major federal actions, and adopt a definition of small wireless facilities that is targeted but also flexible and technology neutral. For facilities that remain subject to environmental processing, T-Mobile supports additional streamlining measures, such as eliminating the requirement to file environmental assessments ("EAs") for facilities located in a floodplain if they will be elevated at least one foot above the base flood elevation ("BFE"), and adopting shot clocks for the review of EAs and the resolution of environmental disputes. Each of these steps will help speed broadband and 5G deployments, including in rural areas, without adversely affecting the environment.

Small wireless facilities should be found not to be undertakings/major federal actions. T-Mobile strongly endorses filings by the Competitive Carriers Association ("CCA"), CTIA and others calling on the Commission to find that small wireless facilities are neither undertakings under the National Historic Preservation Act ("NHPA") nor major federal actions under the National Environmental Policy Act ("NEPA").[1] The Commission has ample authority to make such a finding.[2]

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[1] *See, e.g.*, Competitive Carriers Association, *Ex Parte* Notice, WT Docket No. 17-79, at 2-3 (Feb. 5, 2018); Comments of Competitive Carriers Association, WT Docket No. 17-79, at 47-48 (Jun. 15, 2017); Comments of CTIA, WT Docket No. 16-421, at 47-48 (Mar. 8, 2017); Comments of PTA-FLA, Inc., WT Docket No. 17-79, at 3-7 (Jun. 15, 2017); Comments of Sprint Corporation, WT Docket No. 17-79, at 32 & n.39 (Jun. 15, 2017); Comments of T-Mobile USA, Inc., WT Docket No. 16-421, at 37-38 (Mar. 8, 2017); Comments of Triangle

Under the FCC's blanket licensing scheme, wireless licensees and their designees are not required to obtain construction permits with respect to individual tower sites once a blanket license has been obtained to transmit specific frequencies in a given geographic area.[3] In fact, licensees may construct new wireless facilities, modify existing facilities, and remove wireless stations from service – all without even notifying the Commission. The Commission has acknowledged that it is not even aware of the location of most facilities constructed by wireless licensees.[4] Indeed, only certain towers or larger antennas require notice to the FAA and FCC registration for air safety purposes.[5] Thus, FCC involvement in the construction and modification of small wireless facilities is, at best, minimal, and does not constitute either a federal "undertaking" or a "major federal action." When the degree of agency involvement is marginal, NHPA and NEPA do not apply.[6]

Communication System, Inc., WT Docket No. 17-79, at 16-17 (Jun. 15, 2017); Verizon, *Ex Parte* Notice, WT Docket No. 17-79, at 2 (Dec. 6, 2017); Comments of Verizon, WT Docket No. 17-79, at 58-62 (Jun. 15, 2017); *see also* AT&T, *Ex Parte* Notice, WT Docket No. 17-79, at 1 (Jan. 22, 2018); Comments of the Association of American Railroads, WT Docket No. 17-79, at 16 (Jun. 15, 2017); Comments of the Utilities Technology Council, WT Docket No. 17-79, at 15-16 (Jun. 15, 2017).

[2] *See Consideration of Biological Effects of Radiofrequency Radiation*, Report and Order, 100 F.C.C.2d 543, 546 ¶ 8 (1985) ("[T]he Commission is required to make a threshold determination as to whether the facilities it approves are 'major Federal actions significantly affecting the quality of the human environment,' thus triggering environmental review …."); Nationwide Programmatic Agreement Regarding Section 106 National Historic Preservation Act Review Process, § I.B (Sept. 2004), 47 C.F.R. Pt. 1, App. C ("The Commission has sole authority to determine what activities undertaken by the Commission or its Applicants constitute Undertakings within the meaning of the NHPA.").

[3] *See* 47 U.S.C. § 319(d) (stating that construction permits are not necessary for "stations licensed to common carriers, unless the Commission determines that the public interest, convenience, and necessity would be served by requiring such permits"); *Acceleration of Broadband Deployment*, Report and Order, 29 FCC Rcd 12865, 12904-05 ¶ 84 (2014) (explaining that "the Commission has generally waived the requirement of preconstruction approval for geographic area licensees, as permitted by Section 319(d)"); *see also, e.g.*, 47 C.F.R. § 24.11(b) ("Blanket licenses are granted for each market and frequency block. Applications for individual sites are not required and will not be accepted.").

[4] *See National Wireless Facilities Siting Policies*, Fact Sheet No. 2, at 28 (Sept. 17, 1996).

[5] *See* 47 C.F.R. §§ 17.4, 17.7.

[6] *See Defenders of Wildlife v. Andrus*, 627 F.2d 1238, 1244-45 (D.C. Cir. 1980) (for NEPA to apply, the federal government must undertake "some 'overt act' in furtherance of [a] party's project;" passivity or inaction are insufficient); *Sierra Club v. Penfold*, 857 F.2d 1307, 1314 (9th Cir. 1988) (where an agency's involvement is discretionary and limited to receipt of notice of the project, agency action "is only a marginal federal action rather than a major action"); *Lee v. Thornburgh*, 877 F.2d 1053, 1058 (D.C. Cir. 1980) (where "the planning and construction of [a]

By finding that small wireless facilities are neither undertakings nor major federal actions, the Commission will eliminate unnecessary federal environmental and historic preservation reviews, consistent with the Administration's recently released infrastructure plan.[7] That plan proposes actions to expedite processes for the deployment of infrastructure – including through amending environmental and historic review processes for wireless small cell deployments. Finding that small wireless facilities are neither undertakings nor federal actions would be entirely consistent with the Administration's goal of expediting small cell deployments and "eliminat[ing] unnecessary reviews without adversely affecting the environment."[8]

The definition of small wireless facilities should be targeted but flexible. T-Mobile supports a definition of small wireless facilities that is appropriately targeted yet simple to understand and technology neutral. Such a definition can be informed by elements of the volumetric definition contained in the recently amended Nationwide Collocation Agreement,[9] as well as legislation recently passed in a number of states,[10] while retaining flexibility to account changes in technologies. 5G systems are still in the early stages of development, and T-Mobile agrees with CCA that any small wireless facility definition should accommodate this new, critical phase of broadband deployment.[11] For example, recent proposals recognizing that

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facility is neither funded nor dependent on approval by a federal agency," the "provisions of NHPA … do not apply"). In *Sierra Club v. Penfold*, for example, the court held that mining operations that involved only minimal surface disturbance, and which required only notice but not approval of BLM, did not constitute a major federal action under NEPA. 857 F.2d at 1314. By contrast, small wireless facility deployments do not even require notice to the FCC, making the FCC's involvement even *less* than that deemed minor in *Sierra Club.*

[7] The White House, Legislative Outline for Rebuilding Infrastructure in America (Feb. 12, 2018), https://www.whitehouse.gov/wp-content/uploads/2018/02/INFRASTRUCTURE-211.pdf.

[8] *Id*. at 40 ("*Small cells … do not have an environmental footprint, nor do they disturb the environment or historic property*. However, despite this lack of impact, small cells … typically go through the same level of analysis and review under NEPA and the NHPA, which needlessly adds both delays and costs to the process. Amending the law to expedite small cells and Wi-Fi attachments in NEPA and the NHPA would eliminate unnecessary reviews without adversely affecting the environment.") (emphasis added).

[9] *See* First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, § VI.A.5, 47 C.F.R. Part 1, App. B ("Collocation Agreement").

[10] *See, e.g.*, ARIZ. REV. STAT. §§ 9-591.19, 9-592.I-J; DEL. CODE ANN. tit. 17, §§ 1603(17), 1606(g); FLA. STAT. §§ 337.401(7)(b)(10), 337.401(7)(d)(5); MINN. STAT. §§ 237.162.11, 237.163.3b; N.C. GEN. STAT. §§ 160A-400.51(7a), 160A-400.55(b), 136-18.3A(d); OHIO REV. CODE ANN. § 4939.01(N); R.I. GEN. LAWS § 39-32-1(8); TEX. LOC. GOV'T CODE ANN. §§ 284.003, 284.103; VA. ADMIN. CODE §§ 15.2-2316.3, 56-484.26.

[11] *See* Competitive Carriers Association, *Ex Parte* Notice, WT Docket No. 17-79, at 1 (Feb. 15, 2018) (encouraging the FCC to adopt a definition of small cell that takes into account a carrier's current and future deployment needs).

equipment and antennas may or may not be combined in a single enclosure,[12] and to account for associated support structures,[13] are a step in the right direction to accommodate changed and improved technology.

Floodplain EAs should be eliminated for facilities constructed above the BFE. T-Mobile reiterates its support for the proposal that an EA should not be required for siting in a floodplain, if the site will be built at least one foot above the BFE.[14] Floodplain EAs that satisfy this requirement are routinely approved, and T-Mobile is not aware of any instance where the FCC denied an EA that only triggered the floodplain factor and met the one-foot BFE requirement. While this requirement has been unnecessary for years, it is becoming increasingly unworkable as providers like T-Mobile expand service in rural areas and deploy new wireless infrastructure critical to next generation services. For example, the American Association of Railroads has reported that "floodplain review represents the biggest delay to wireless infrastructure deployment," and that it adds three to six months to the approval process at an average cost of anywhere between $1,000 and $20,000.[15] In T-Mobile's experience, more than 90% of its EA filings in the last three years were necessitated solely due to location in a floodplain, and these filings typically delay deployment by four months at an average cost of $12,000.

Elimination of the EA filing requirement when the facilities will be built at least one foot above the BFE would address this critical issue without endangering the environment. T-Mobile's experience is that the FCC uniformly approves EAs that only trigger the floodplain factor and meet the one-foot BFE requirement. Likewise, Verizon has indicated while more than 80% of its EA filings over the last three years have been for facilities in floodplains, it has not received a single negative comment for facilities receiving approval from any of the expert agencies on floodplains, and the Commission approved every such site without change.[16] There is thus no demonstrated environmental benefit to requiring such EAs, which require applicants and Commission staff to spend significant amounts of time and money preparing and reviewing.

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[12] *See, e.g.*, Verizon, *Ex Parte* Notice, WT Docket No. 17-79, at 1 (Feb. 8, 2018) (recognizing that 5G and next-generation deployments may encompass both radio and antenna components in a single piece of equipment); Competitive Carriers Association, *Ex Parte* Notice, WT Docket No. 17-79, at 1 (Feb. 15, 2018) (agreeing that it will be increasingly difficult to separately allocate the volume measurement of an antenna with the volume of associated equipment).

[13] *See, e.g.*, Competitive Carriers Association, *Ex Parte* Notice, WT Docket No. 17-79, at Att. (Feb. 9, 2018) (proposing revisions to 47 C.F.R. § 1.1320).

[14] *See* T-Mobile Comments, WT Docket No. 17-79, at 58-59 (June 15, 2017); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330, 3352-53 ¶ 65 (2017).

[15] Comments of American Association of Railroads Comments, WT Docket 17-79, at 27-28 (June 15, 2017).

[16] Comments of Verizon, WT Docket No. 17-79, at 63-64 (June 15, 2017).

Shot clocks should govern the review of EAs and resolution of environmental disputes. Finally, T-Mobile reiterates its strong support for the establishment of environmental review "shot clocks" that would govern the Commission's processing of EAs, as well as its resolution of environmental disputes. EAs are currently not subject to any processing timelines or dispute resolutions procedures, which can allow them to languish for extended periods of time (sometimes years). Even where EAs are not filed, parties may file environmental objections under the Commission's rules with respect to a planned facility, in which case no timelines apply to resolve such disputes. Environmental review shot clocks would address these situations and help speed the deployment of service to consumers.

Pursuant to Section 1.1206 of the Commission's rules, we are filing an electronic copy of this letter in the above-captioned docket.

Respectfully submitted,

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