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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*

Dear Ms. Dortch:

T-Mobile submits this *ex parte* filing in strong support of the Commission's draft *Second Report and Order* ("Draft Order") in this proceeding.¹ T-Mobile agrees that the Commission should 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"), and therefore are not subject to either statute's review procedures. For facilities that remain subject to environmental processing, T-Mobile strongly endorses the Commission's plans to (i) clarify and make improvements to the Tribal consultation process; (ii) eliminate the requirement to file environmental assessments ("EAs") for most floodplain facilities; and (iii) adopt timeframes for the Commission to act on EAs. These actions will help speed broadband and 5G deployments, including in rural areas, without adversely affecting the environment.

T-Mobile agrees that small facilities are not undertakings/major federal actions.

T-Mobile supports the *Draft Order*'s clarification that the deployment of small wireless facilities meeting certain size and height requirements does not constitute either an undertaking within the meaning of NHPA or a major federal action under NEPA, meaning that neither statute's review process would be mandated for such deployments.² A recent report by Accenture supports the *Draft Order*'s findings that by eliminating the need for environmental and historic preservation review for construction of these small wireless facilities, the *Draft Order* would slash 5G

¹ See *Proposed Rules to Streamline Wireless Infrastructure Deployment*, Second Report and Order, FCC-CIRC1803-01 (White Copy rel. Mar. 1, 2018) ("Draft Order"), https://apps.fcc.gov/edocs_public/attachmatch/DOC-349528A1.pdf.

² *Draft Order* at ¶¶ 33-42; see also Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2-6 (Mar. 13, 2018) (agreeing that "[t]he Commission has ample authority to find that the deployment of small wireless facilities is neither an undertaking nor a major federal action").

regulatory deployment costs (saving well over a billion dollars), cut 5G deployment timelines (by months), and drive new wireless deployments (in the thousands).³ This will expedite deployment, and allow providers to redirect funds from unnecessary regulatory reviews to new facilities to enhance and expand networks. The result will be improved national 5G-readiness, greater job creation and economic growth, and strengthened U.S. leadership in mobile.⁴

In T-Mobile's case, adoption of the *Draft Order* would help accelerate the company's plans to quickly deploy tens of thousands of small cells to add capacity and speed to its network while paving the way for 5G.⁵ The environmental and historic review fees associated with deploying these small wireless facilities under the current framework would be tens of millions of dollars. By finding that such facilities are not undertakings/major federal actions, the FCC will allow these and similar deployments to proceed apace while freeing up funds that can be used to support network densification and expansion elsewhere.

T-Mobile also supports the *Draft Order*'s proposal to adopt a definition of small wireless facility antenna that is informed by elements of the Commission's existing volumetric definition as well as legislation recently passed in a number of states.⁶ 5G systems are still in the early stages of development, and T-Mobile agrees that enhancements to the definition would afford

³ See *Draft Order* at ¶ 5; ACCENTURE STRATEGY, IMPACT OF FEDERAL REGULATORY REVIEWS ON SMALL CELL DEPLOYMENT (Mar. 12, 2018), *appended to* Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (Mar. 13, 2018) ("CTIA Accenture *Ex Parte*"); see also Office of Commissioner Brendan Carr, News Release, *FCC's Wireless Infrastructure Order Cuts \$1.56 Billion in Red Tape, Creates 17,000 Jobs* (Mar. 13, 2018), https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0313/DOC-349693A1.pdf.

⁴ See CTIA Accenture *Ex Parte* at 2 ("The updates to NHPA and NEPA regulatory requirements in the [*Draft Order*] have the potential to speed the benefits of 5G, driving economic growth, creating jobs, and enabling the deployment of new services that will enhance health care, transportation, public safety, and smart cities.").

⁵ See T-Mobile, News Release, *The Un-carrier Unveils Next Steps on the Path to Nationwide Mobile 5G* (Feb. 27, 2018) ("T-Mobile 5G News Release"), <https://newsroom.t-mobile.com/news-and-blogs/mwc-2018-5g.htm>. These small cells will operate using both unlicensed LAA technology and licensed spectrum. While unlicensed facilities are already not subject to environmental and historic review, see *Draft Order* at ¶ 40, the company's planned licensed facilities will benefit from the *Draft Order*.

⁶ See *Draft Order* at ¶¶ 70-72 (citing First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, § VI, 47 C.F.R. Part 1, App. B; ARIZ. STAT. § 11-1801(17); COLO. REV. STAT. § 29-27-402(4)(a)(II); DEL. CODE § 1603(17); FLA. STAT. ch. 337.401(7)(b)(10); IND. CODE § 8-1-32.3-9 (a)(2); IA. CODE § 8C.2(10a); KAN. STAT. § 66-2019(b)(14); MINN. STAT. § 237.162, Subd. 11; N.C. GEN. STAT. § 160A-400.51(7a); R.I. GEN. LAWS § 39-32-1(8); TEX. LOCAL GOV. CODE § 284.003(a); VA. CODE § 15.2-2316.3; WASH. CODE § 80.36.375(2)(d)).

providers additional flexibility while meeting historic preservation goals.⁷ For example, to address situations where small wireless antennas themselves are not greater than three cubic feet but the enclosures required by localities for aesthetic purposes may be slightly larger, the antenna volumetric limit should pertain to the antenna itself rather than a particular type or size of enclosure.⁸ Likewise, enhancing the definition to permit an incremental height increase over the existing facility or nearby structures of up to ten percent or ten feet, whichever is greater, would improve flexibility and better align with current practices.⁹

T-Mobile supports the plan to make the Tribal participation process more efficient. For larger facilities that would still require historic preservation review, T-Mobile applauds the *Draft Order*'s provisions to accelerate the timeframe for Tribes to respond to applicant submissions, specify what those submissions must contain, and clarify that applicants have no legal obligation to pay up-front fees when providing Tribes an opportunity to comment.¹⁰ As the *Draft Order* notes, taking these steps will help "accelerate deployment of next generation wireless services by reducing costs and establishing timelines for [Tribal] reviews."¹¹

Clarifying and accelerating the Tribal review process also would facilitate T-Mobile's network expansion and enhancement efforts, as it works to expeditiously build out and upgrade its network to utilize the 600 MHz spectrum it acquired in the Broadcast Incentive Auction for nearly \$8 billion.¹² Indeed, T-Mobile is already deploying 5G-ready equipment using 600 MHz spectrum.¹³ By clarifying when fees are not required and adopting tighter, more predictable response timeframes, the *Draft Order* could enable T-Mobile to accelerate its 5G plans, as well as expand its 4G LTE deployments to reach new customers and bring competition to rural areas

⁷ See, e.g., Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (Mar. 15, 2018) ("CTIA Small Cell *Ex Parte*"); Letter from Andre J. Lachance, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (Mar. 13, 2018) ("Verizon Small Cell *Ex Parte*").

⁸ See CTIA Small Cell *Ex Parte* at 1-2; Verizon Small Cell *Ex Parte* at 1.

⁹ See CTIA Small Cell *Ex Parte* at 3.

¹⁰ See *Draft Order* at ¶¶ 95-105, 108.

¹¹ See *id.*, App. C at ¶ 46 (Regulatory Flexibility Analysis); see also Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 4 (Mar. 15, 2018) ("CTIA Tribal Consultation *Ex Parte*") (strongly supporting "the Commission's proposed reforms to the Tribal Consultation Process," which will "facilitate broadband deployment while also protecting historic preservation and environmental goals").

¹² See *Incentive Auction Closing and Channel Reassignment Public Notice*, Public Notice, 32 FCC Rcd 2786 (2017).

¹³ See T-Mobile 5G News Release.

of the country,¹⁴ consistent with the Administration’s and Chairman Pai’s rural broadband deployment goals.¹⁵

T-Mobile supports the plan to eliminate EAs for most floodplain facilities. T-Mobile agrees with the *Draft Order*’s ruling that an EA should not be required for siting a facility in a floodplain, if the facility will be built at least one foot above the Base Flood Elevation (“BFE”).¹⁶ As the *Draft Order* notes, these EAs can cost thousands of dollars to prepare and take several months to process, yet for the vast majority of floodplain EAs that are filed, “the Commission staff ultimately issued FONSIIs ... with no need for mitigation measures or other changes.”¹⁷ T-Mobile’s experience confirms these findings. In the last three years, more than 90% of its EA filings were necessitated solely due to location in a floodplain. These filings typically delay deployment by four months at an average cost of \$12,000, and T-Mobile is not aware of any instance where the FCC denied an EA that was only triggered by the floodplain factor and met the one-foot BFE requirement. Elimination of the EA filing requirement when the facilities will be built at least one foot above the BFE would therefore address this critical issue without endangering the environment.

T-Mobile supports the plan to establish timeframes for the Commission to act on EAs. Finally, T-Mobile strongly endorses the *Draft Order*’s plan to establish environmental review “shot clocks” – typically 60 days from placement on Public Notice – that would govern the Commission’s processing of EAs.¹⁸ As the *Draft Order* recognizes and T-Mobile has previously explained, EAs are currently not subject to any processing timelines or dispute resolutions

¹⁴ See, e.g., T-Mobile, News Release, *T-Mobile Lights Up World’s First 600 MHz LTE Network at Breakneck Pace* (Aug. 16, 2017) (noting that T-Mobile is starting to light up its 600 MHz spectrum in rural America, and the result will be “more wireless choice and competition for rural Americans”), <http://investor.t-mobile.com/file/Index?KeyFile=389936871>.

¹⁵ See Remarks of President Donald J. Trump, 26 Years Later, a President Hears Rural America (Jan. 8, 2018), <https://www.whitehouse.gov/articles/26-years-later-president-hears-rural-america/>; Executive Order, Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America (Jan. 8, 2018); Memorandum for the Secretary of the Interior, Supporting Broadband Tower Facilities in Rural America on Federal Properties (Jan. 8, 2018); Remarks of Commissioner Ajit Pai at the Branderly: “A Digital Empowerment Agenda” (Sept. 13, 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-341210A1.pdf.

¹⁶ *Draft Order* at ¶ 132; see also T-Mobile Comments, WT Docket No. 17-79, at 58-59 (June 15, 2017) (“T-Mobile Comments”). As the Council on Economic Quality (“CEQ”) recently confirmed, this amendment to the FCC’s NEPA procedures “is in conformity with NEPA and the CEQ regulations implementing the procedural provisions of NEPA.” See Letter from Edward A. Boling, Associate Director for NEPA, CEQ, to Thomas M. Johnson, Jr., General Counsel, FCC, WT Docket No. 17-79 (Mar. 9, 2018).

¹⁷ *Draft Order* at ¶ 133.

¹⁸ *Id.* at ¶¶ 141-45.

procedures, which can allow them to languish for extended periods of time (sometimes years).¹⁹ Environmental review timeframes would address these situations and provide greater certainty and transparency to applicants, thereby facilitating the deployment of broadband 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,

/s/ Cathleen A. Massey

Cathleen A. Massey

Vice President, Federal Regulatory Affairs

¹⁹ See *id.* at ¶ 140 (citing T-Mobile Comments at 60).