Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
	)	

OPPOSITION TO PETITIONS AND LETTERS SEEKING RECONSIDERATION

Pursuant to Section 1.429(f) of the Commission's Rules, CTIA[1] hereby opposes the petition for reconsideration filed by the National Association of Telecommunications Officers and Advisors ("NATOA") and the letters seeking reconsideration filed by various individuals.[2] The Commission's Second Report and Order[3] in this proceeding was a proper, lawful exercise of the Commission's authority under the National Environmental Policy Act ("NEPA") and the National Historic Preservation Act ("NHPA"), was consistent with those statutes, and was solidly grounded in the factual record. The Petitions and the letters fail to present any valid arguments against the Commission's action and should accordingly be rejected.

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[1] CTIA® (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st- century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, DC.

[2] *See Petitions for Reconsideration of Action in Proceeding*, Public Notice, Report No. 3099 (rel. July 24, 2018), 83 Fed. Reg. 42456 (Aug. 22, 2018) ("*Public Notice*"). *See also* Petition for Reconsideration of the National Association of Telecommunications Officers and Advisors, WT Docket No. 17-79 (filed June 4, 2018) ("Petition"); *infra*, note 21.

[3] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, WT Docket No. 17-79, FCC 18-30 (rel. Mar. 30, 2018) ("*Second R&O*").

I. INTRODUCTION.

The Commission has the legal authority to determine that the deployment of certain small wireless facilities is neither a "major federal action" under NEPA nor a "federal undertaking" under NHPA. It properly exercised that authority here. The Commission's decision is entirely consistent with those statutes and with the programmatic agreements it has executed implementing NHPA. The Petition and the letters fail to provide any facts or arguments demonstrating why that decision should be reconsidered.

In addition, the Commission's decision to streamline its NEPA and NHPA review processes for those deployments that are major federal actions or undertakings was a carefully crafted, balanced solution to what the record demonstrated is a serious and growing problem – the long delays and costs resulting from the Commission's and Tribal authorities' prior implementations of NEPA and NHPA. The record established that NEPA and NHPA reviews are impeding deployment of wireless network infrastructure that is essential for broadband, and soon, next-generation 5G technologies. The Commission correctly found that streamlining those reviews "will make a real difference in promoting this country's leadership in 5G."[4] The Commission's streamlining actions also are fully consistent with NEPA and NHPA, as well as the programmatic agreements implementing NHPA.

The Petition and the letters do not supply grounds to reconsider or modify the *Second R&O*. In fact, the Petition does not directly challenge the Commission's lawful determination of what facility deployments constitute major federal actions or undertakings, but instead improperly objects to long-final Commission decisions that are not pertinent to this proceeding. Moreover, the individual letters seeking to modify the Commission's environmental rules

[4] *Second R&O* ¶ 5.

addressing radiofrequency ("RF") exposure are procedurally defective, without merit, and outside the scope of this proceeding.

In short, the *Second R&O* was a proper exercise of the Commission's authority, consistent with federal statutes and programmatic agreements, and soundly based on a substantial record. The Commission should dismiss and/or deny the Petition and the letters.

II. THE COMMISSION VALIDLY HELD THAT CERTAIN SMALL WIRELESS FACILITIES ARE NOT MAJOR FEDERAL ACTIONS OR UNDERTAKINGS.

A key element of the *Second R&O* was the Commission's determination that the deployment of certain small wireless facilities is neither a "major federal action" under NEPA nor a "federal undertaking" under NHPA.[5] The Commission based its determination on an extensive record demonstrating that the level of its involvement in the deployment of small wireless facilities does not constitute sufficient agency action to trigger review under NEPA and NHPA.[6]

NATOA does not challenge the Commission's central conclusion. Instead, it raises unrelated and invalid claims that provide no basis to reconsider the *Second R&O*.[7] NATOA first asserts that the Commission incorrectly found that its action would not affect separate state and local environmental and historic review procedures.[8] But NATOA's assertion is wrong. The *Second R&O* did not address state and local reviews at all; it only pertained to the Commission's

[5] 42 U.S.C. § 4332(2)(C) (NEPA); 54 U.S.C. § 306108 (NHPA).

[6] *Second R&O* ¶¶ 58-95.

[7] NATOA also fails to explain precisely how it wants the *Second R&O* to be modified, despite the requirement in Section 1.429(c) of the Commission's Rules that petitions for reconsideration "shall state with particularity the respects in which petitioner believes the actions taken should be changed." 47 C.F.R. § 1.429(c). It is thus procedurally defective and should be dismissed for this reason.

[8] Petition at 2-3.

own rules implementing two federal statutes. In fact, the Commission acknowledged the continuing role of state and local reviews:

> Finally, nothing we do in this order precludes any review conducted by other authorities—such as state and local authorities—insofar as they have review processes encompassing small wireless facility deployments. The existence of state and local review procedures, adopted and implemented by regulators with more intimate knowledge of local geography and history, reduces the likelihood that small wireless facilities will be deployed in ways that will have adverse environmental and historic preservation effects.[9]

NATOA's actual objection is to the Commission's shot clocks for review of wireless siting applications and the "deemed granted" remedy implementing Section 6409 of the 2012 Spectrum Act, which it asserts have "largely precluded" state and local reviews. It thus asks that the Commission "clarify that Section 6409 does not apply where state or local environmental laws require review."[10] But this argument and the request are both procedurally and substantively flawed. The *Second R&O* did not address either the shot clocks or the deemed granted remedy. Both were adopted in prior separate proceedings.[11] NATOA's claim as to their impact on state and local siting reviews is not properly raised in this proceeding. Moreover, NATOA's argument is contradicted by the record, which reflects that a number of local jurisdictions take less time to review applications than the current shot clocks prescribe.[12] In

[9] *Second R&O* ¶ 77 (footnotes omitted).

[10] Petition at 4.

[11] *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994 (2009), *aff'd sub nom. City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 1863 (2013); *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865 (2014), *aff'd sub nom. Montgomery County, Maryland v. FCC*, 811 F.3d 121 (4th Cir. 2015).

[12] *See, e.g.*, Reply Comments of Competitive Carriers Association, WT Docket 16-421, at 8 (filed Apr. 7, 2017) ("CCA PN Replies") (localities in Ohio, Texas, Kentucky, and North Carolina have all completed reviews in 60 days or less, showing the reasonableness of new shot clocks); Comments of T-Mobile USA, Inc., WT Docket No. 17-79, at 19 (filed June 15, 2017).

addition, many states have enacted deadlines for their localities to act on siting applications that are comparable to or shorter than the Commission's shot clocks, underscoring that the Commission's streamlined review procedures do not preclude local review.[13]

NATOA also incorrectly asserts that the *Second R&O* creates "unresolved conflicts" with the National Programmatic Agreement for Collocation of Wireless Antennas ("Collocation Agreement").[14] This argument is a red herring; there is no conflict and no confusion. If a small wireless facility does not constitute a major federal action or undertaking, it is not subject to NEPA or NHPA, or, by extension, the Collocation Agreement. By contrast, if a particular collocation is a major federal action or undertaking, then it is subject to NEPA and NHPA and, by extension, the Collocation Agreement. There is no conflict.

NATOA's claim that the Commission should have provided a "safety valve"[15] for public comment on small wireless facility deployment similar to that found in the Collocation Agreement also lacks merit. The Collocation Agreement was entered into pursuant to NHPA. Neither NHPA nor the Collocation Agreement applies to deployments that are not undertakings. However, as the Commission noted in the *Second R&O*, deployments will continue to be subject to state and local environmental and historic preservation review, which can include opportunities for public comment.[16]

Finally, NATOA claims that the *Second R&O* fails to account for multiple small wireless facilities that may be deployed "in close proximity" within a "limited geographic area."[17] But

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[13] *See* Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, FCC, WT Docket Nos. 17-79 and 16-421, WC Docket No. 17-84 (filed Aug. 30, 2018).

[14] Petition at 6-7.

[15] *Id.*

[16] *Second R&O* ¶ 77.

[17] Petition at 4-5.

the location or spacing of facilities is irrelevant to the determination of whether their deployment constitutes a major federal action or an undertaking under NEPA or NHPA. The Commission's resolution of that issue was grounded in its finding that the deployment of such facilities does not involve sufficient Commission action to constitute a major federal action or undertaking.[18] NATOA presents no facts or arguments challenging that finding.

To the extent that NATOA's objection relates to the Commission's decision to exclude certain small wireless facilities from the scope of Section 1.1312 of its Rules, that decision was based on substantial information in the record, including the significant costs and burdens imposed by such reviews and the importance of small wireless facilities in supporting wireless services.[19] The Commission's finding that "the public interest does not support applying the Section 1.1312 approval process to small wireless facilities"[20] also properly advanced one of the policy objectives underlying this proceeding and the Commission's mission: to remove barriers impeding broadband deployment and the benefits that deployment will deliver to the public.

In sum, none of NATOA's arguments provides a basis for the Commission to reconsider or reverse its determination – which was consistent with the law and well supported by the record – that certain small wireless facilities do not constitute major federal actions or undertakings subject to NEPA and NHPA review.

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[18] *Second R&O* ¶¶ 85-86 (finding that issuance of a geographic area license "does not create sufficient Commission involvement in the deployment of particular wireless facilities in connection with that license for that deployment to constitute an undertaking for purposes of the NHPA"; and finding as to NEPA that "the virtually nonexistent Commission involvement in the deployment of wireless facilities under a geographic area service licenses takes wireless facility deployment outside the scope of 'major Federal action'").

[19] *Id*. ¶¶ 66-72.

[20] *Id*. ¶ 64.

III. THE LETTERS ADDRESSING THE COMMISSION'S RF EXPOSURE RULES ARE PROCEDURALLY DEFICIENT AND WITHOUT MERIT.

A number of individuals filed letters requesting reconsideration of the *Second R&O* based on issues with the Commission's RF exposure rules.[21] Each of these filings is procedurally defective and without merit and should be dismissed and/or denied.

Nearly all of these filings are one- or two-page form letters using similar language which these parties appear to have been asked to sign and file – indeed one form letter includes the direction to "type your name here," and many are unsigned in violation of Section 1.52 of the Commission's Rules.[22] All of the letters fail to "state with peculiarity the respects in which petitioner believes the action taken should be changed," as Section 1.429(c) of the Commission's Rules requires. The filings should be dismissed for these reasons alone.[23]

Further, the letters lack merit. First, they incorrectly argue that the Commission did not address the effect of its action on human exposure to RF radiation. However, they ignore the fact that all small wireless facilities must continue to comply with those rules both before and after the *Second R&O* was adopted. As the Commission declared, "Transmissions from all facilities that operate pursuant to geographic area licenses remain subject to our rules governing radio frequency (RF) emissions exposure."[24] In addition, the Commission amended Section

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[21] *See Public Notice, supra*, note 2. Additional letter petitions making the same arguments appear in the Commission's Electronic Comment Filing System but not in the *Public Notice*. *See* Petitions of Jeff and Stephanie Austin, Robert Bitonte and Michelle Gutierrez Harris, Jerry Day, Susan Gage, Elizabeth Kelley, Wei-Ching Lee, Ellen Marks, and Sarah Strain. CTIA also opposes these and all similar additional requests.

[22] *See, e.g.*, Petition of Gary Swittel and Mary Kay Swittel; unsigned filings by Pamela Ericson, Molly P. Hauck, Michael and Rita Lipa, and Susan Riedeman.

[23] While the filers "incorporate by reference" the reconsideration petition filed by Edward B. Myers, Mr. Myers subsequently filed a letter stating, "I hereby withdraw and voluntarily dismiss with prejudice my request for reconsideration." Letter from Edward B. Myers, WT Docket No. 17-79 (filed July 18, 2018).

[24] *Second R&O* ¶ 45.

1.1312 of its Rules to make clear that small cells are exempt from NEPA and NHPA review only if they comply with those RF exposure limits. Small wireless facilities are not subject to review if they "do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b)."[25] The *Second R&O* does not change these standards; they remain in full force and effect.

The filers also claim that the Commission should modify its existing RF radiation exposure rules. This request is clearly beyond the scope of this proceeding. The Commission's notice initiating this proceeding did not discuss or seek comment on those rules; in fact, the Commission is evaluating whether and how to update them in a separate pending rulemaking.[26] It is well settled that the Commission, like other federal agencies, has discretion over how to manage its rulemaking functions and when and how it acts in specific proceedings.[27] Arguments for changes to the RF exposure rules thus have no place here.[28]

[25] 47 C.F.R. § 1.1312(e)(2)(vi).

[26] *Reassessment of FCC Radiofrequency Exposure Limits and Policies*, First Report and Order, Further Notice of Proposed Rulemaking and Notice of Inquiry, 28 FCC Rcd 3498 (2013).

[27] 47 U.S.C. § 154(j) (stating that the Commission can structure its proceedings in a "manner as will best conduce to the proper dispatch of business and to the ends of justice" based upon the circumstances of a particular matter), *cited in Nader v. FCC*, 520 F.2d 182, 196 (D.C. Cir. 1974); *City of San Antonio v. CAB*, 374 F.2d 326, 329 (D.C. Cir. 1967) ("No principle of administrative law is more firmly established than that of agency control of its own calendar. . . . Consolidation, scope of the inquiry, and similar questions are housekeeping details addressed to the discretion of the agency.").

[28] The letters also make the passing argument that the *Second R&O* did not address the "negative impacts" of small wireless facilities on "the integrity of residential communities" because they may "affect aesthetics and property values." But the filers supply no supporting facts or data. In any event, as noted above, NATOA raised the same incorrect argument, but the Commission fully answered it, noting that "nothing we do in this order" precludes local review of the deployment of such facilities. *Second R&O* ¶ 77.

IV. CONCLUSION.

For the above reasons, the reconsideration requests in this proceeding should be dismissed and/or denied.

Respectfully submitted,

/s/ Kara R. Graves

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Dated: September 6, 2018

CERTIFICATE OF SERVICE

I, Alex Carr, hereby certify that on this 6th day of September, 2018, a copy of the foregoing CTIA Opposition to Petition and Letters Seeking Reconsideration was served by first-class U.S. mail, postage prepaid, upon:

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/s/ Alex Carr

* These individuals filed letters seeking reconsideration that did not appear in the *Public Notice*. Out of an abundance of caution, service is being provided to these individuals as well.