Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY TO OPPOSITIONS TO THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS' PETITION FOR RECONSIDERATION

The National Association of Telecommunications Officers and Advisors ("NATOA") hereby replies to the oppositions filed by CTIA[1] and Sprint[2] (the "Opposition") to NATOA's Petition for Reconsideration ("Petition") of the Second Report and Order released on March 30, 2018, in the above-captioned proceeding ("Order").

I. INTRODUCTION

NATOA's Petition seeks reconsideration based on three deficiencies in the Order, each of which undermines the conclusion that rewriting Section 1.1312 of the Commission's rules to exclude small wireless facility deployments from review under the National Historic Preservation Act ("NHPA")[3] and the National Environmental Policy Act of 1969 ("NEPA")[4] is consistent with the public interest. The Opposition fails to directly address the impact these deficiencies have on the Commission's public interest findings. Sprint argues that rescinding the Order will harm Sprint and other wireless providers' businesses, ignoring any mention of the issues raised in the Petition. CTIA attempts to address issues raised in the Petition, but spends just two sentences addressing

[1] CTIA Opposition to Petitions and Letters Seeking Reconsideration, WT Docket No. 17-79 (September 6, 2018) ("CTIA Opposition").

[2] Sprint Letter in Opposition to Petitions for Reconsideration of Second Report and Order Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 (September 6, 2018).

[3] 54 U.S.C. § 300101 *et seq.*

[4] 42 U.S.C. § 4321 *et seq.*

the public interest analysis in which it, too, focuses on the benefits the wireless industry will reap from the Order.[5] Neither explains why the Commission's public interest analysis, and thus its new rules exempting small wireless facilities from NEPA and NHPA, is sound despite the deficiencies on which NATOA seeks reconsideration.

II. ARGUMENT

As the Petition points out, with particularity,[6] the Order is flawed in that its public interest finding does not fully analyze the impact of small wireless facilities on the environment and historic properties. CTIA incorrectly argues that the Petition "does not directly challenge" the Commission's determination that small wireless facility deployments do not constitute major federal actions or undertakings.[7] CTIA apparently misunderstands the Petition, as this is precisely what the Petition does.

The Order finds that "the only possible basis by which small wireless facility deployments could be federal undertakings [subject to NEPA/NHPA] would be if they were subject to the Commission's 'limited approval authority'" codified in Section 1.1312 of the Commission's rules.[8] The Order then amends those rules to exclude small wireless facilities, which the Commission concludes it can do "so long as our amendments are otherwise consistent with the

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[5] CTIA Opposition at 6.

[6] CTIA asserts that NATOA failed to "state with particularity the respects in which petitioner believes the actions taken should be changed" as required in 47 C.F.R. § 1.429(c). *See* CTIA Opposition at 3, n. 7. This assertion is plainly incorrect. NATOA expressly states that the Order should be changed by, among other things: (i) "clarif[ying] that Section 6409 does not apply where state or local laws require environmental or historic preservation review" (Petition at 4); (ii) "account[ing] for the many small cells and associated equipment likely to be deployed by various providers in close proximity to one another" (Petition at 4); (iii) "address[ing] the impacts of multiple ground-mounted cabinets and other equipment sited near or on many poles in a small geographic area" (Petition at 5); (iv) "addressing the impact the Order will have on the Collocation NPA" (Petition at 6); and (v) "[w]here the Order has the effect of supplanting the Collocation NPA, the Commission must clearly articulate the specific findings which justify its departure from existing policy" (Petition at 7).

[7] CTIA Opposition at 2.

[8] Order ¶ 58.

Communications Act."[9] The Order goes on to conclude that the amendments are consistent with the Act, "including its mandate to regulate in the public interest,"[10] and the balance of Section III.B of the Order is dedicated to the Commission's analysis of the public interest.[11] The Order ultimately concludes that "we are not persuaded that it is in the public interest to exercise our limited reservation of authority to impose Section 1.1312 on small wireless facility deployments and thereby trigger environmental and historic preservation review."[12] In short, the Commission's decision to exempt small wireless facilities from NEPA and NHPA review ultimately hinges on its public interest analysis, which the Opposition fails to address.

The Commission's public interest determination—and thus the exemption from NEPA and NHPA—is limited to small wireless facilities as defined in the Order, which the Commission so limited "to minimize the impact that these facilities, as a class, could have on the environment and historic properties."[13] As explained in the Petition, the Commission's analysis of the impact of these facilities is flawed, undermining the determination that it is in the public interest to exempt these facilities from NEPA and NHPA review. The Order relies on unsubstantiated assumptions about the availability of state or local reviews, fails to address the impact of many small wireless facilities deployed in small geographic areas and ignores the previous balance of harms struck in the Collocation NPA. These flaws require reconsideration.

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[9] *Id*. at ¶ 59.

[10] *Id*. at ¶ 60.

[11] Section III.B.3 of the Order addresses "Other Considerations," including geographic area licenses, which the Commission finds to not constitute sufficient federal action to be an undertaking or major federal action. *See* Order ¶ 84-91. This analysis is largely separate from the public interest analysis underlying the amendments to Section 1.1312, though the Commission also relies on its public interest findings to bolster its view that issuing geographic area licenses is not an undertaking or major federal action. *See* Order ¶ 90.

[12] Order ¶ 94.

[13] *Id.* at ¶ 73.

A. The Commission Cannot Rely on State and Local Review to Substitute for NEPA and NHPA Reviews

CTIA incorrectly characterizes NATOA's argument with respect to the interaction between the Order and state or local environmental and historic preservation review. CTIA claims "NATOA first asserts that the Commission incorrectly found that its action would not affect separate state and local environmental and historic review procedures."[14] Nowhere does NATOA take that position. To the contrary, the Petition notes that the Order does not impact state and local review, a fact on which the Commission relies to support its public interest analysis, finding that such reviews "reduce[] the likelihood that small wireless facilities will be deployed in ways that will have adverse environmental and historic preservation effects."[15]

NATOA's point is not that the Order affects state and local review; it's that state and local review has been neutered by shot clocks and deemed granted remedies imposed outside the context of the Order to such an extent that the Commission cannot rely on those procedures to "catch" any environmental or historic preservation issues that will no longer be subject to federal review.[16] Since the filing of the Petition, the Commission has proposed additional shot clocks related to small wireless facilities pursuant to Section 253(a) of the Communications Act.[17] These proposed new time limits exacerbate the issue raised in NATOA's Petition and further undermine the Commission's previous reliance on state and local review to protect the public interest.

The Opposition fails to address this shortcoming in the Order, which warrants reconsideration to either reassess the appropriate balance of harms where meaningful state and

[14] CTIA Opposition at 3.

[15] Order ¶ 77.

[16] *See* Petition at 2-4.

[17] *See* Declaratory Ruling and Third Report and Order, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79.

local review is not likely possible or to clarify that shot clocks do not apply where state or local laws require environmental or historic preservation review.[18]

B. Failure to Address Cumulative Deployments in a Limited Area Requires Reconsideration

CTIA incorrectly claims that "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."[19] As explained above, the Order exempts from 1.1312, and thus from NEPA and NHPA review, only a certain class of small wireless facilities for which the Commission found the public interest does not support such review.[20] Again, these limits are "intended to exclude from review those facilities that are least likely to implicate federal environmental and historic interests."[21] Given this stated intent, the implication of many small cells and associated equipment deployed by various providers in close proximity to one another is directly relevant to the Commission's public interest finding in the Order.

The Commission recognizes as much in the Order. The Commission considered (and rejected) some commenters' requests to include a limit on the number of small wireless facilities deployed on a single structure or pole.[22] Yet the Commission failed to address commenters' separate concern that multiple deployments in a small geographic area may have significant environmental or historic preservation impacts that are different from the impacts of multiple attachments on a single pole.[23] In the context of the Order, which expressly intends to weigh

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[18] *See id*. at 3-4.

[19] CTIA Opposition at 6.

[20] Order ¶ 74-75.

[21] *Id*. at ¶ 4.

[22] *Id*. at ¶ 76.

[23] *See, e.g.*, NATOA Letter at 2-3; Boston Letter at 5. While the Commission did address the limit on the number of small wireless facilities deployed on a single structure or pole, it did so with a cursory statement that it is reasonable not to limit the number of facilities on a given structure or pole "given the economic, technical, and public interest benefits of promoting small wireless facilities deployment." *Id*. at ¶ 77. We do not suggest that this statement provides reasonable

various harms to determine which facilities are least likely to "implicate federal environmental and historic interests," this oversight requires reconsideration.

C. The Order Must Address the Collocation NPA

As stated in the Petition, the Order purports to "build on" the Collocation NPA, but in reality ignores, without comment, key considerations of the Collocation NPA.[24] The Petition asks the Commission to reconsider the Order to clarify whether the Collocation NPA will continue to apply as written, or if the Order effectively overrides conflicting provisions of the Collocation NPA. CTIA argues the Order is clear: The Collocation NPA will not apply to small wireless facilities as defined in the Order because they are no longer subject to NHPA. Even if CTIA is correct, reconsideration is nevertheless required because nothing in the Order addresses why these deployments no longer require protections provided in amendments to the Collocation NPA just two years ago.[25]

For example, the Collocation NPA establishes separate requirements for sites within or near historic properties to be exempt from NHPA.[26] The Order does not acknowledge those distinctions, nor explain the basis for eliminating the distinction between historic and nonhistoric properties that the Commission found to be appropriate in 2016.

Similarly, the Collocation NPA provides a complaint process as a "safety valve" to protect historic places and areas that might otherwise be impacted by small wireless deployments.[27] The Order finds support in the fact that the size limits are analogous to the Collocation NPA, yet ignores

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support for the Commission's conclusion, nor that a similar statement with respect to multiple deployments in a limited geographic area would suffice. It is similarly insufficient to rely on what the Commission argues is an "extremely limited record of [environmental and historic preservation] harms flowing from small wireless facilities." Order ¶ 76, note 146. The lack of harm suggests that the existing rules have worked to prevent harm, rather than supporting a conclusion that no harm will arise under new, more relaxed rules.

[24] Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 CFR Part 1, Appx. B, § VI ("Collocation NPA").

[25] *See, e.g.*, Collocation NPA at VII.

[26] Collocation NPA at VI and VII.

[27] Collocation NPA at VII.A.6, VII.B.5.

that Commission found in the Collocation NPA that, even with those size limits, a complaint process was an important protection against potential harms. The Order fails to address why this protection is no longer necessary.

To the extent the Order is intended to supplant the Collocation NPA, reconsideration is required to explain the basis for abandoning the policies established in the 2016 amendments to the Collocation NPA.

III. CONCLUSION

The Opposition fails to explain why the gaps in the Commission's analysis pointed out in NATOA's Petition should remain unaddressed. NATOA respectfully requests that the Commission reconsider the Second Report and Order to address the significant omissions and issues raised in the Petition.

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September 17, 2018

CERTIFICATE OF SERVICE

I, Nancy L. Werner, hereby certify that on this 17th day of September, 2018, a copy of the foregoing Reply to Oppositions to the National Association of Telecommunications Officers and Advisors' Petition for Reconsideration was served by first-class U.S. mail, postage prepaid, upon:

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