

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Public Employees for Environmental)
Responsibility and Request for Amendment)
of the Commission’s Environmental Rules)
Regarding NEPA and NHPA) RM-9913

**COMMENTS OF THE CELLULAR TELECOMMUNICATIONS & INTERNET
ASSOCIATION**

The Cellular Telecommunications & Internet Association (“CTIA”),¹ pursuant to Section 1.429 of the Commission’s rules, 47 C.F.R. §1.429 (f) , submits its Opposition to the Petition for Reconsideration in the above captioned proceeding.² Specifically, CTIA maintains that the PEER Petition for Reconsideration fails to meet the standard for granting petitions for reconsideration, as set forth in Section 1.429 of the Commission’s rules. Moreover, the PEER Petition for Reconsideration suffers from the same procedural defects as its initial Petition for Rulemaking: premature, repetitive and

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See *Telecommunications Industry’s Environmental Civil Violations in U.S. Territorial Waters (South Florida and the Virgin Islands and Along the Coastal Wetlands of Maine—FCC Accountability and Responsibility for Rulemaking Regarding the NEPA, NHPA, RM-9913, Public Notice*, (rel. Feb. 1, 2002) (“*Public Notice*”); Petition for Reconsideration filed by the Public Employees for Environmental Responsibility (“PEER”), (filed Jan. 3, 2002) (“PEER Petition for Reconsideration”).

lack of any new evidence or facts that conclusively demonstrate that the Commission must grant the PEER Petition for Reconsideration. Accordingly, the PEER Petition for Reconsideration, like its initial Petition for Rulemaking, must be denied.

I. THE PEER PETITION FOR RECONSIDERATION IS DEFICIENT AND DOES NOT MEET THE FCC'S REQUIREMENTS FOR GRANTING SUCH PETITIONS.

Under the Commission's Rules, a petition for reconsideration must "state with particularity the respects in which petitioner believes the action taken should be changed."³ In its Petition for Reconsideration, the Petitioner mistakenly relies on broad conclusory statements and inconclusive evidence, which it already provided in its initial Petition for Rulemaking. Rather than providing specific facts and the requisite evidence to support a reconsideration of the PEER Order, the Petitioner misconstrues the statutory scheme and requirements of National Environmental Protection Act ("NEPA") and the Council on Environmental Quality ("CEQ") implementing regulations, which the Commission clearly and accurately demonstrates its compliance with such requirements.⁴ Moreover, the Petitioner fails to provide any new facts or evidence, in accordance with Section 1.429(b) of the Commission's rules, to support its Petition for Reconsideration. The Petitioner simply rehashes arguments that the Commission already has found to be unpersuasive and not sufficient

³ 47 C.F.R. § 1.429(c).

⁴ See *In the Matter of Public Employees for Environmental Responsibility Request for Amendment of the Commission's Environmental Rules Regarding NEPA and NHPA*, RM-9913, Order, FCC 01-319, ¶ 11 (rel. Dec. 5, 2001) ("PEER Order").

to provide a rational basis for initiating the broad rulemaking the Petitioner requested in its initial Petition.⁵

In the PEER Order, the Commission clearly demonstrates that its environmental rules are consistent with NEPA and CEQ's regulations, and that its environmental rules provide ample opportunity "to address, as necessary, actions that are normally categorically excluded from environmental processing but which it or others may deem appropriate to question due to unusual circumstances."⁶ While the Petitioner seeks justification for why the Commission is allegedly departing from the "policies of the governments of the U.S. Virgin Islands, Maine, New Mexico, California and the U.S. Army Corps of Engineers,"⁷ the Commission clearly explained that a overly broad rulemaking is not the appropriate venue for addressing such issues, particularly in view of the Commission's existing regulatory process which more than adequately responds to the Petitioner's question.

II. THE PEER PETITION FOR RECONSIDERATION SUFFERS FROM THE SAME PROCEDURAL DEFECTS AS ITS INITIAL PETITION.

Similar to the insufficiency of its initial petition under Section 1.401(e) of the Commission's rules, the PEER Petition for Reconsideration suffers from the same procedural defects: it is repetitive and frivolous.⁸ While the Commission provided a

⁵ PEER Order, at ¶ 12 (The evidence of environmental harm proffered by PEER does not reflect any environmental processing failings by the Commission.)

⁶ PEER Order, at ¶13.

⁷ PEER Petition, at 6.

⁸ Section 1.401(e) states that "[p]etitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner." 47 C.F.R. §1.401(e).

clear and well-reasoned analysis for its denial of the initial PEER Petition, the Petitioner attempts to seek reconsideration of that decision by rehashing the same unsubstantiated arguments. PEER has again demanded the Commission to revisit its environmental rules. While PEER claims in its petition to provide “substantial evidence of a trend to degradation,”⁹ it again “fails to describe this cumulative impact or provide concrete evidence of this cumulative effect”¹⁰ and does nothing more than make general assertions about the impact of certain actions on environmental resources.

As the Commission stated in the PEER Order, “a few examples in no way justify the complete overhaul of the Commission’s long-standing environmental rules across all service areas.”¹¹ The Commission correctly explained in its Order that merely averring to cumulative impacts is insufficient where PEER has failed to “explain the nature of these effects, much less provide evidence of them.”¹² PEER’s Petition for Reconsideration suffers from the same procedural defect as its initial petition for rulemaking, namely, that it has not proffered “evidence of environmental harm [that] reflects any environmental processing failings by the Commission.”¹³ By asking the Commission to reconsider its decision based on repetitive arguments without substantial evidence to support them

Section 1.403 of the Commission’s rules requires that “[a]ll petitions for rulemaking . . . meeting the requirements of §1.401 will be given a file number and, promptly thereafter, a ‘Public Notice’ will be issued.” 47 C.F.R. §1.403.

⁹ PEER Petition, at 7.

¹⁰ PEER Order, at ¶17.

¹¹ PEER Order, at ¶12.

¹² PEER Order, at ¶18.

¹³ PEER Order, at ¶12.

provides the Commission with no choice but to dismiss its Petition for Reconsideration. .

III. THE COMMISSION PROVIDES A RATIONALE BASIS FOR DENIAL OF THE INITIAL PEER PETITION.

Consistent with its obligation to clearly articulate a basis for its decision and provide a “rational connection between the facts found and the choice made,”¹⁴ the Commission’s denial was reasonably clear and did not exceed the bounds of harmless error. In its Petition for Reconsideration, PEER contends that the FCC’s order is “arbitrary, capricious, an abuse of discretion and otherwise unlawful.”¹⁵ To the contrary, the PEER Order represents a careful analysis of the legal framework established by Section 1.1307 of the Commission’s rules, the Council on Environmental Quality’s (CEQ) regulations,¹⁶ and the statutory scheme established by Congress in NEPA. Contrary to the claims made in the PEER Petition for Reconsideration, the Commission provided a reasoned basis for its decision to deny the Petition for Rulemaking and the record supported its action.

¹⁴ *Motor Vehicle Manufacturers Association v. State Farm Mutual Insurance Co.*, 463 U.S. 29, 43 (1983). *See Burlington Truck Lines*, 371 U.S. at 168; *AT&T Wireless Services, Inc. v. FCC*, No. 00-1304, slip op. at 15 (D.C. Cir. Nov. 9, 2001); *United States Telecom Association v. FCC*, 227 F.3d 450, 460-62 (D.C. Cir. 2000); *City of Brookings Municipal Telephone Co. v. FCC*, 822 F.2d 1153, 1167-69 (D.C. Cir. 1987).

¹⁵ *See* PEER Petition, at 4.

¹⁶ The Commission’s rules are consistent with the CEQ’s three-tiered approach, which has been upheld by courts. *See Friends of the Earth v. Hintz*, 800 F.2d 822, 834-35 (9th Cir. 1986). CEQ, an entity created by NEPA, has published rules that set forth binding regulations on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969. *See* PEER Order at ¶2.

The Petitioner spends several pages disputing the “self-certification” process by which the Petitioner claims “industry officials are misleading the FCC.”¹⁷ However, nowhere in its filing does the Petitioner identify any evidence of failure. The Petitioner goes on to state that the “FCC’s self-certification process does not provide the necessary information required for the FCC to meets [sic] its obligations.”¹⁸ However, the Commission has already explained that its reliance upon applicant statements, which requires Commission involvement and enforcement, is entirely consistent with CEQ regulations and NHPA rules.¹⁹ The Commission has established systems of self-certification as an effective regulatory tool when the Federal agency does not have the resources and expertise in a particular subject area that impacts telecommunications, *i.e.*, construction permits, type acceptance, and auction process. Self-certification, coupled with the enforcement mechanisms that the FCC has in place, *i.e.*, fines, forfeiture, penalties, including but not limited to revocation of license, provide the appropriate balance. The Commission correctly determined that its reliance on self-certification comports with its environmental review obligations and that its investigatory and enforcement authority provides adequate incentives to carriers for compliance.

Finally, the Commission’s PEER Order includes public policy considerations that argue against the initiation of a rulemaking proceeding. The Commission previously determined that the “overly broad and inclusive regulations”²⁰ demanded by PEER in its

¹⁷ See PEER Petition, at 9.

¹⁸ PEER Petition, at 10.

¹⁹ See PEER Order, at ¶16.

²⁰ See PEER Order, at ¶12.

petition for rulemaking “would impose unnecessary and substantial delays in preparation and processing of applications, as well as significant financial and administrative burdens on both applicants and the Commission.”²¹ In sum, the Petitioner offers no reason why the Commission’s prior finding that PEER’s petition for rulemaking would not serve the public interest is in error.

²¹ See PEER Order, at ¶13.

IV. CONCLUSION

For these reasons, CTIA respectfully requests that the Commission deny the PEER Petition for Reconsideration.

Respectfully submitted,

/s/ _____

**CELLULAR
TELECOMMUNICATIONS
& INTERNET ASSOCIATION**

1250 Connecticut Ave., N.W., Suite 800
Washington, D.C. 20036
(202) 785-0081

Michael F. Altschul
Senior Vice President & General Counsel

Andrea D. Williams
Assistant General Counsel

Sarah E. Leeper
Staff Counsel

February 21, 2002