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FCC's NEPA Reforms: Federal Permitting Changes Will Help Spur Investment

by

Randolph J. May and Joseph V. Kennedy *

I. Introduction and Summary

On September 9, the FCC issued a draft *Report and Order and Further Notice of Proposed Rulemaking* in its *Modernizing the Commission's National Environmental Policy Act Rules* proceeding.[1] The main purpose of the FCC's proposed action is to overhaul the Commission's "outdated" rules governing its role in implementing the National Environmental Policy Act (NEPA). In the Commission's own language, these rules "have long stood as a costly and time-consuming barrier to the deployment of communications infrastructure."[2] The reforms the Commission proposes to adopt would clarify and limit the scope of the FCC's actions that are subject to environmental review while, at the same time, expediting the review processes for those projects that remain subject to NEPA.

As the Commission says, this should unlock "billions of dollars in economic activity that would otherwise be stuck in red tape." When they become effective, the new rules will advance the

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[1] Modernizing the Commission's National Environmental Policy Act Rules, *Report and Order and Further Notice of Proposed Rulemaking.* WT Docket No. 25-217, (Report and Order), https://www.fcc.gov/document/modernizing-commissions-national-environmental-policy-act-rules.
[2] FCC Fact Sheet, Modernizing the Commission's National Environmental Policy Act Rules, Report and Order and Further Notice of Proposed Rulemaking WT Docket No. 25-217, September 9, 2026, https://docs.fcc.gov/public/attachments/DOC-424840A1.pdf.

FCC's important "Build America Agenda" which has as an overarching goal modernization of America's advanced communications infrastructure. Achieving this modernization goal, in turn, is crucial to promoting overall consumer welfare and strong economic growth, both of which are predicates to protecting America's national security.

The FCC deserves commendation for proposing these changes, which are consistent with government-wide efforts to reform NEPA, and they should be implemented promptly.

II. The Need for Permitting Reform

Almost every telecommunications project requires permits for rights of way and construction on local, state, or federal property. Although many permit applications are handled smoothly with little time or expense, broadband Internet providers frequently complain that other government agencies use the opportunity to impose unreasonable delays and extra fees that bear no relation to costs. Depending on their size, these impediments could cause a developer to postpone or even cancel a project, thus slowing the deployment of broadband facilities and other infrastructure necessary for improving connectivity. Given the tens of billions of dollars that will soon be invested in both the Broadband, Equity, and Access Deployment (BEAD) program and the further network infrastructure enhancements needed to handle the present and coming demands of artificial intelligence (AI), the federal government has a vital interest in reforming various aspects of the permitting process.

Although much of the attention regarding ameliorating permitting delays rightly has been directed at state and local governments, many projects also require federal permits before construction can start. Two of the most important hurdles are the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). A recent report released by CTIA determined, using surveys and working sessions, that providers will spend over $2.2 billion on regulatory compliance in the next decade alone. In addition to higher costs, the statutes would delay the average project deploying new technologies and service upgrades by five months, costing another $4.0 billion. Compliance would also have broader economic effects on GDP, job loss, and a significant decrease in consumer welfare. This general welfare loss would cost $1.3 billion for an overall cost of at least $7.5 billion over the next ten years.[3] The report also found that the FCC's current practice "has not kept pace with the rapid technological advancements in the telecommunications sector."[4]

The Commission's reforms are part of a much broader effort to reduce the scope of NEPA. In 2023 Congress amended the Act itself by codifying core definitions, exempting certain actions from review, and speeding agency action.[5] In April 2026 the Council on Economic Quality issued regulatory guidance to help federal agencies establish, revise, adopt, and apply categorical

[3] Christian M. Dippon and Claire Huther, "Quantifying the Opportunity of Reforming the Federal Communications Commission's National Environment Policy Act and National Historical Preservation Act Rules, Prepared for CTIA January 2026, https://api.ctia.org/wp-content/uploads/2026/01/Dippon_NEPA_NHPA_Reform_Final.pdf; *See also*, "Study Finds FCC Permitting Reform Could Remove Billions in Costs Burdening Wireless Construction," Wireless Estimator, January 23, 2026, https://wirelessestimator.com/articles/2026/study-finds-fcc-permitting-reform-could-remove-billions-in-costs-burdening-wireless-construction/.

[4] Christian M. Dippon and Claire Huther, 2.

[5] 42 U.S.C. § 4321 *et seq*.: Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10, (1023).

exclusions in accordance with NEPA.[6] These exclusions are adopted in the FCC'S Report and Order.

Earlier this year President Trump issued an Executive Order directing agencies to "prioritize efficiency and certainty over any other objectives."[7] The Executive Order requires all relevant agencies to "undertake all available efforts to eliminate all delays within their respective permitting processes." He followed this up with a Presidential Memorandum noting that agencies do not "properly leverage technology to effectively and efficiently evaluate environmental permits."[8] The Memorandum directed agencies to streamline their procedures for environmental review and permit processing, with the goal of speeding data gathering and decision-making. The Memorandum also directed the Council on Environmental Quality to develop a "Permitting Technology Action Plan" to modernize the use of technology for permitting and environmental review processes.

Finally, the Supreme Court also weighed in by addressing how federal agencies must conduct environmental project reviews under NEPA. A key holding, which guides the rules the FCC is proposing to adopt, is that federal agencies are no longer required to analyze the environmental impacts of unrelated or far-off future activities. The consideration of indirect effects under NEPA does not include the environmental effects of upstream or downstream projects that are separate in time or place from the federal action subject to NEPA's requirements. In the specific case, an environmental impact statement for a railway connecting oilfields in Utah to the national freight network did not need to assess the environmental effects of increased oil refining along the U.S Gulf Coast, where the oil would be transported. It only was required to analyze the project at hand.[9]

The Court's opinion centered around two main determinations. First, courts are not required to give "substantial deference" to agency decisions regarding the scope of an environmental impact statement (EIS). Second, agencies and courts are not required to analyze the environmental effects of separate projects that are not directly connected to the project under review. Agencies must still evaluate indirect and foreseeable environmental effects that the project itself might cause.

The net result of these developments is meant to be a significant reduction in the number of Environmental Studies that agencies must complete to comply with NEPA. This will be accomplished at the FCC largely by no longer requiring filings for projects that are not closely

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[6] Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies, Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act, April 9, 2026, https://nepa.gov/sites/default/files/documents/Categorical%20Exclusion%20Guidance%202026.pdf.

[7] *Unleashing American Energy*, Exec. Order No. 14154, 90 Fed. Reg. 8353, 8355. January 29, 2025, https://www.whitehouse.gov/president"al-actions/2025/01/unleashing-american-energy/.

[8] *Updating Permitting Technology for the 21st Century*, Presidential Memorandum, (April 15, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/updating-permitting-technology-for-the-21st-century/.

[9] *Seven County Infrastructure Coalition v. Eagle County, Colorado,* 605 U.S., 168, (2025), https://www.supremecourt.gov/opinions/24pdf/23-975_m648.pdf. The Court stated that "NEPA is a "purely procedural statute." *See also,* Andrew Brady and Paul Wierenga, "*Seven County Infrastructure Coalition v. Eagle County*: Top Points," DLA Piper, June 6, 2025, https://www.dlapiper.com/en/insights/publications/2025/06/supreme-court-nepa-review.

tied to agency actions. Because the Administration contends that these projects were never meant to fall within NEPA's ambit, the net result should be to reduce regulatory burdens without jeopardizing the law’s ability to handle its main functions. The result should be faster approvals and lower costs.

III. FCC Reforms

The Regulatory Impact Statement accompanying the Report and Order estimates that the present value of the total cost savings between 2026 and 2030 from eliminating environmental review of construction is $169.5 million at a 3 percent discount rate. The reductions do not apply to Antenna Structure Registration (ASR) or streamlining the NEPA review process for infrastructure subject to ASR registration. These estimates likely understate the benefits since they do not estimate gains in consumer and producer surplus related to the elimination of delays. They also assume a flat rate of new infrastructure builds despite almost certain future increases in construction projects due to the BEAD Program, continued private investment, and the growing needs of AI for supporting infrastructure.

The purpose of the Report and Order is to streamline environmental review, promote efficiency, and encourage deployment of infrastructure that increases competition and technological innovation. It does this in several ways. The first is to codify the statutory definition of "major federal actions" (MFA) in the Commission’s rules and clarify which Commission actions are MFAs subject to environmental processing. The definition of MFA is important because it triggers agency action under NEPA.

NEPA requires agencies to make a threshold decision about whether an action qualifies as an MFA before being subject to environmental processing. The Report and Order thus codifies the statutory definition of MFA and its exclusions. The Commission supplements the definition with “bright line” rules that clarify the most common deployment scenarios that the FCC has encountered in the past.

The first is that NEPA does not enlarge an agency’s powers or enable it to make decisions that are otherwise unauthorized. It only applies to actions over which agencies already have statutory authority. Second, NEPA’s “purely procedural” requirements apply only to actions taken by the federal government. The relevant question is whether FCC action amounts to an MFA. Non-federal actions fall outside of the agency’s NEPA responsibilities unless the federal agency provides enough funding or control. Finally, agency action is subject to NEPA only if the agency finds that it has “substantial” federal control and responsibility. This substantiality requirement is new to NEPA and thus signals a reduction in NEPA’s applicability. Finally, NEPA gives agencies significant discretion to find that an action is not an MFA.

The Commission's Report and Order makes it clear that certain FCC actions do not meet the MFA definition and therefore, by themselves, do not trigger environmental reviews. These include geographic area licensing, site-based spectrum, unlicensed and licensed-by-rule operations, satellite earth stations, and space-based operations. In each case, the reason is that the Commission lacks any authority over subsequent deployment locations and structures.

In contrast, the Commission found that, regardless of whether Antenna Structure Registration (ASR) qualifies as an MFA, the agency retains significant statutory authority to require review for the limited number of antenna structures that require notice of proposed construction to the Federal Aviation Administration due to physical obstruction. In addition, equipment and operations deployed in connection with spectrum licenses remain subject to the Commission's existing radio frequency requirements as well as the registration and compliance rules for structures that require ASR.

With respect to ordinary spectrum licenses, the Commission explains that licensees retain control and responsibility over their facility deployment decisions. As a result, there is an insufficient causal connection between the Commission's licensing activity and subsequent infrastructure deployments to qualify for MFA status.

The Report and Order also streamlines other aspects of the FCC's rules including the requirements for categorical exclusions (CEs), environmental assessments (EAs), environmental impact statements (EISs), joint agency actions, and emergency situations. The FCC also changes the rules for separating NEPA requirements from its NHPA rules to reflect the revisions to the environmental rules in the Report and Order.

IV. Conclusion

The rule changes will help provide certainty regarding the processing for all applications, including those for small operations. The changes are expected to reduce the number of applications requiring NEPA review and streamline the environmental review process, increasing efficiency and certainty while expediting the process for all applicants seeking environmental approval of pending construction permits.

The FCC estimates that its provisions will reduce the cost of NEPA and EA reviews by 20 percent between 2026 and 2030, contributing to a total savings of $169.5 million at a 3 percent discount rate. These estimates are likely conservative because they do not account for the losses in consumer and producer welfare. Nor do they reflect the expected increases in deployments due to the BEAD program and the increasing demands associated with a multitude of AI infrastructure build-outs.

The FCC deserves commendation for proposing these changes, which largely comply with earlier government-wide efforts to reform NEPA. When implemented, they will advance the FCC's important "Build America Agenda" which is crucial to modernizing America's advanced communications infrastructure. This ongoing modernization, in turn, is crucial to promoting overall consumer and social welfare and strong economic growth which are predicates to protecting America's national security.

*Randolph J. May is President and Joseph V. Kennedy is Director of Policy Studies and Senior Fellow of the Free State Foundation, an independent, nonpartisan free market-oriented think tank located in Potomac, Maryland. The views expressed in this *Perspectives* do not necessarily reflect the view of others on the staff of the Free State Foundation or those affiliated with it.