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**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Environmental Review)	PETITIONERS’ REPLY IN
AT&T Proposed Tower in the Sawtooth)	SUPPORT OF PETITION FOR
National Recreation Area Near Redfish)	ENVIRONMENTAL REVIEW
Lake, ID)	
_____)	

INTRODUCTION

The Federal Communication Commission (“FCC”) should grant the Petition for Environmental Review (“Petition”), submitted by the Sawtooth Interpretive & Historical Association (“SIHA”) and the Idaho Conservation League (“ICL”), to consider the adverse environmental impacts from AT&T’s proposed cell tower in the Sawtooth National Recreation Area (“SNRA”). Among other effects, the proposed tower threatens significant adverse effects to the SNRA—an area Congress designated 50 years ago to specifically protect scenery, nature, and wildlife—and to the historical Redfish Lake Lodge. To comply with the National Environmental Policy Act (“NEPA”) and NEPA regulations, the FCC must require an Environmental Assessment (“EA”) or an Environmental Impact Statement (“EIS”), must involve the public, and must consider alternatives prior to making any decision on AT&T’s application.

ARGUMENT

I. The Tower Is Not Eligible for Categorical Exclusion & It May Have Significant Environmental Effects

While FCC NEPA regulations categorically exclude some new tower builds from undergoing an EA, *see* 47 C.F.R. § 1.1306(a), the regulations require an EA under specified circumstances, 47 C.F.R. § 1.1307(a). As stated in the Petition, two of those circumstances requiring an EA are present here: (1) “Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places (*see* 54 U.S.C. 300308; 36 CFR parts 60 and 800), and that are subject to review pursuant to section 1.1320 and have been determined through that review process to have adverse effects on identified historic properties,” 47 C.F.R. § 1.1307(a)(4); and (2) “Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion),” 47 C.F.R. § 1.1307(a)(7).

Additionally, as stated in the Petition, whether or not a facility is otherwise eligible for categorical exclusion, under any circumstances where the FCC determines the facility “may have a significant environmental impact,” an EA is required. 47 C.F.R. §§ 1.1307(c) & (d). The FCC is also bound by the Council on Environmental Quality’s NEPA regulations, which allow a federal agency to avoid preparing an EIS only if it finds the project “will not have significant effects.” 40 C.F.R. 1501.6(a).

As set forth below, the proposed tower’s adverse effects on the Redfish Lake Lodge Complex preclude use of a categorical exclusion under 47 C.F.R. § 1.1307(a)(4). The proposed tower’s adverse effects to surface features in the SNRA also preclude use of a categorical exclusions under 47 C.F.R. § 1.1307(a)(7). Additionally—and whether or not it is otherwise

eligible for categorical exclusion—the proposed tower easily “may” have significant effects requiring at least an EA, if not an EIS, under 47 C.F.R. § 1.1307(c) & (d) and 40 C.F.R. 1501.6(a), based on likely adverse effects to the Redfish Lake Lodge Complex, the SNRA’s scenery and wildlife, designated wilderness areas, and the Central Idaho Dark Sky Reserve.

A. Adverse Effects to the Redfish Lake Lodge Complex

AT&T does not dispute the Petition’s showing that the proposed tower will adversely affect the NRHP-eligible Redfish Lake Lodge Complex under 47 CFR 1.1307(a)(4). However, AT&T argues that such adverse effects to historic properties no longer require an EA, based on *Declaratory Ruling & Notice of Proposed Rulemaking*, 35 FCC Rcd 5977, WT Docket No. 19-250 (2020), which states “an environmental assessment is unnecessary after an adverse effect on a historic property is mitigated by an [MOA].”

This ruling conflicts with the FCC’s NEPA regulations at 47 CFR 1.1307(a)(4), which remain in effect, and which explicitly require an EA in this situation where AT&T’s tower “may” adversely affect an eligible site—whether or not there is any associated mitigation. Again, AT&T does not dispute the fact that there will be adverse effects to the Redfish Lake Lodge Complex. The FCC’s NEPA regulations cannot be ignored and these certain adverse effects require AT&T to prepare an EA.

Moreover, even if mitigation by an MOA can be grounds for avoiding NEPA, AT&T does not yet have a final MOA. *See* Opposition at 6. And even if the draft MOA becomes final, it does not qualify under the *Declaratory Ruling*. The *Declaratory Ruling* requires of such MOAs: “The executed agreement demonstrates that the applicant: has notified the public of the proposed undertaking; has consulted with the State Historic Preservation Officer and/or Tribal Historic Preservation Officers, and other interested parties to identify potentially affected historic

properties; and has worked with such parties to agree on a plan to mitigate adverse effects.” 35 FCC Rcd at 6001 ¶ 49 (emphases added). While Petitioners did participate as interested parties in the MOA process, Petitioners did not agree on a plan to mitigate adverse effects. *See* Exhibit A (enclosed email chain). Thus, the FCC cannot rely on AT&T’s MOA to avoid NEPA.

In any event, the mere fact that an action with adverse impacts will be accompanied by mitigation does not mean significant impacts will be avoided. Here, AT&T has not proposed any mitigation that would directly address the tower’s visual impacts to the Redfish Lake Lodge Complex, nor any that will have any other benefit to the Redfish Lake Lodge Complex. Instead, all mitigation is directed at entirely unrelated actions and in other locations. These include an: (1) an architectural survey in Stanley, ID (5 miles away and unrelated to the proposed cell tower); (2) a cultural landscape study for the region (unrelated to the proposed cell tower); and (3) roof remediation for a National Register-listed cabin (9 miles away and unrelated to the proposed cell tower). Thus, whatever the value of this mitigation, the tower itself will still mar the skyline from Redfish Lake Lodge Complex and requires environmental review based on these potentially significant effects.

B. Adverse Effects to the Sawtooth National Recreation Area

AT&T’s proposed tower also requires environmental review because it will adversely affect the SNRA. Congress established the SNRA 50 years ago specifically to “assure the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values.” 86 Statute 612, Public Law 92-400 (Aug. 22, 1972).

First, the tower will cause a substantial change in surface features, making it ineligible for a categorical exclusion under 47 C.F.R. § 1.1307(a)(7). The tower itself is a surface feature. It will be constructed on the ground, and will replace the existing surface features: forest and forest

floor that currently make up the ground and the tree canopy. Given how much taller the tower is compared to the existing surface features (100 feet above the existing tree canopy), the tower does represent a significant change in surface features in the SNRA.

AT&T argues that if an EA is required merely because the tower will be visible above a tree canopy, then “nearly every project to construct a wireless tower across the country would require an EA.” Opposition, p. 9. AT&T is wrong. This project—unlike the vast majority of all projects—is located in the heart of a protected area explicitly created by Congress for the purpose of preserving its scenic, natural, and pastoral values. *See* 86 Statute 612.

Second, whether or not the tower’s construction will cause a substantial change in “surface features” under 47 C.F.R. § 1.1307(a)(7), the certain adverse effects the tower would have on the scenic, natural, and pastoral character of the SNRA easily require an EA, if not a full EIS, under 47 C.F.R. § 1.1307(c) & (d) and 40 C.F.R. 1501.6(a). Again, AT&T refuses to recognize the importance of the SNRA and the values for which Congress chose to protect it. The reality is that the SNRA is a highly unique and cherished part of Idaho. Recent news articles on AT&T’s proposed tower, and on the 50th anniversary of the designation of the SNRA, highlight the area’s unique values and the significant controversy the proposed tower has generated. *See* Exhibits B–H (enclosed).

Third, potential effects to wildlife in the SNRA require environmental review. FCC NEPA regulations require the preparation of an EA if located within an area officially designated as a “wildlife preserve.” 47 CFR § 1.1307(a)(2). AT&T states that the area is not designated as a wildlife preserve. Petitioners disagree. The SNRA was specifically designated to “assure the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values.” 86 Stat. 612 (emphasis added).

C. Adverse Effects on Designated Wilderness

The proposed tower requires NEPA because it may adversely affect two designated wilderness areas: the Sawtooth Wilderness and Cecil D. Andrus-White Clouds Wilderness., which about 5 miles and 9 miles away from the tower location, respectively. *See Fig. 1 below.*

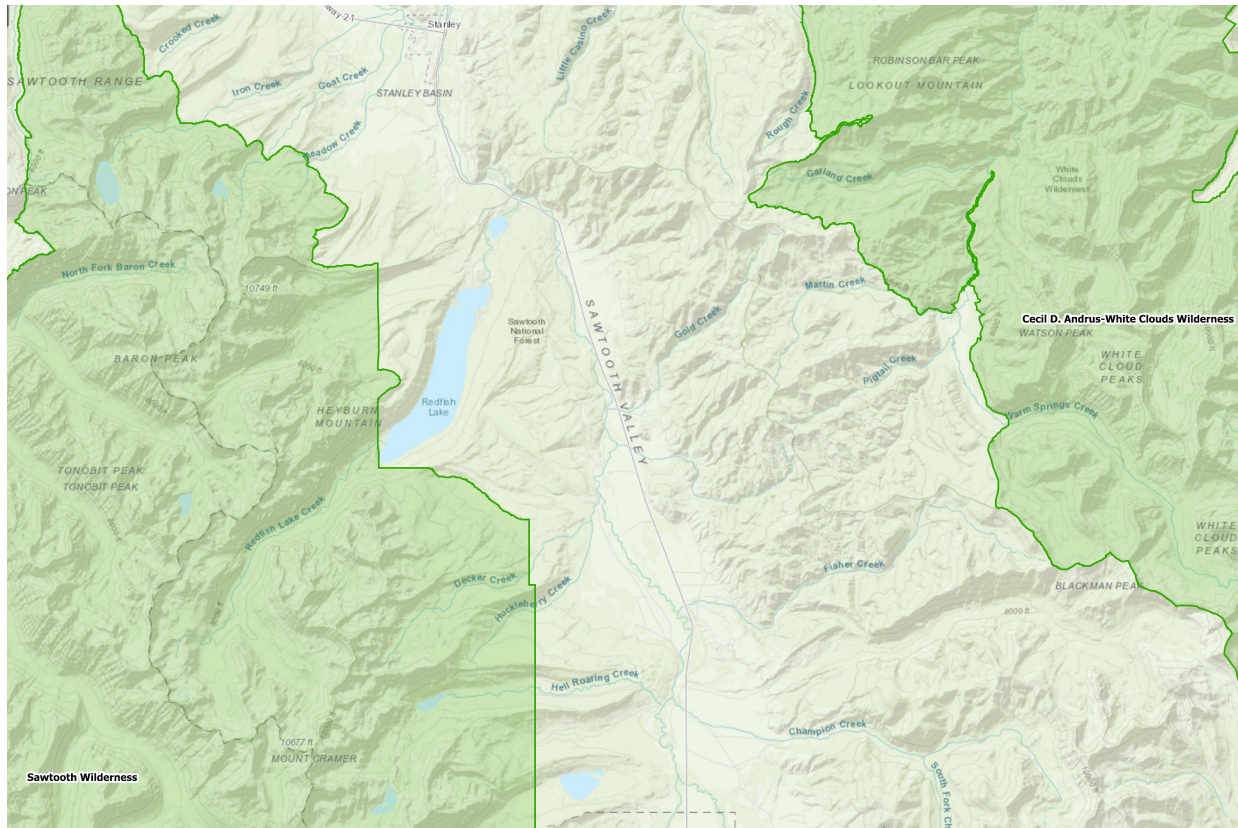


Fig. 1 – Map depicting Redfish Lake and nearby portions of the Sawtooth Wilderness (green to west) and the Cecil D. Andrus-White Clouds Wilderness (green to east) (created from the maps link on the Wilderness Connect website: <https://wilderness.net/>).

These areas were designated as wilderness by Congress under the Wilderness Act of 1964, which defines wilderness as “an area of undeveloped Federal land retaining its primeval character and influence...” 16 U.S.C. § 1131(c). The Wilderness Act further states that a wilderness area should “generally appear to have been affected primarily by the forces of nature,

with the imprint of man’s work substantially unnoticeable” and have “outstanding opportunities for solitude.” *Id.* The presence of a large, new commercial cell tower within 10 miles of two such wilderness areas has the potential to affect wilderness character by introducing cell service, and the corresponding use of additional technology and increased visitation, to remote areas that have not previously had service. Introducing cell service to portions of these two wilderness areas has the potential to impact core wilderness values such as solitude and primeval character that must be considered in an EA or EIS.

D. Adverse Effects to the Central Idaho Dark Sky Reserve

AT&T dismisses the potential for adverse effects to the Central Idaho Dark Sky Reserve by claiming that the Federal Aviation Administration (“FAA”) will not require any lighting on the tower and that AT&T will not voluntarily add lighting. Other than making assertions in its Opposition, AT&T has not provided any documents confirming lighting will neither be required nor chosen when the tower is constructed. Furthermore, it is unknown whether the FAA, other authorities, and/or AT&T might require or choose lighting on or near the tower in the future, after it is constructed. Lighting issues, and effects to the Dark Sky Reserve, thus remain uncertain, may be significant, and should be considered in an EA, or EIS.

II. AT&T Should Not Be Allowed to Change Course & Avoid NEPA

In 2021, when FirstNet was the lead federal agency for this proposal, AT&T’s consultant for historic properties compliance (Environmental Corporation of America) informed Petitioners by email that “after the Section 106 process concludes, FirstNet and AT&T will be completing an EA for this project to address the concerns raised in the petitions submitted to FirstNet by the Advocates for the West on July 2, 2020.” Exhibit A (enclosed). As the new lead agency, the FCC should not let AT&T change course, avoid environmental review, and cut out the public.

III. The FCC Cannot Rely on the Idaho Land Board to Avoid NEPA

AT&T suggests that its lease from the Idaho Land Board addresses concerns raised in the Petition. The FCC, however, cannot rely on non-NEPA and state agency processes and decisions to comply with NEPA. *See, e.g., S. Fork Band Council v. Dept. of Interior*, 588 F.3d 718, 726 (9th Cir. 2009) (“A non-NEPA document – let alone one prepared and adopted by a state government – cannot satisfy a federal agency’s obligations under NEPA.”); *Klamath-Siskiyou Wildlands Center v. BLM*, 387 F.3d 989, 998 (9th Cir. 2004) (rejecting as “without merit” argument that agency may avoid NEPA where a “facility operates pursuant to a state permit”). Furthermore, the Land Board did not consider the issues raised in this Petition.

In fact, the Land Board does not consider environmental issues when making leasing decisions. Instead, it has a singular focus on maximizing long-term financial returns, pursuant to the Idaho State Constitution. As Land Board member and Idaho Attorney General Lawrence Wasden stated at the July 21, 2020 Land Board meeting at which AT&T’s lease was discussed:

Our job is one thing only, and that is to act on behalf of those beneficiaries. What actions we take must be aligned with their interest, that is to produce the money that supports the schools or the other beneficiaries. It’s helpful to us to hear what other people have to say. I welcome that input. But it’s important that people understand that very narrow focus is what we must make our decision on, not based upon all of the other – relevant and important information, but not on point.

Opposition, Ex. F, p. 76. At that meeting, the public raised concerns to the Land Board about the AT&T lease and its effects to the SNRA, the Dark Sky Reserve, scenery, recreation, wildlife, historic sites, and other public and environmental values. But the Land Board did not consider those issues when it issued AT&T’s lease.

Thus, the fact that the Land Board issued the tower site lease to AT&T has no bearing on whether the tower may have adverse environmental effects, and the FCC cannot rely on the Land Board’s lease as an excuse to avoid its own environmental review in an EA or EIS.

IV. The FCC Cannot Rely on AT&T's Consideration of Alternatives to Comply With NEPA

The consideration of alternatives is at the heart of NEPA, which directs agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(E). *See also* 40 C.F.R. § 1502.14(a)–(c) (1978); 40 C.F.R. § 1501.2(b)(3) (2020). The fact that AT&T claims to have assessed various alternatives already—outside of any NEPA process—does not relieve the FCC of its NEPA obligations.

The alternatives AT&T says it considered outside of NEPA are precisely the types of alternatives that could be included in an EA or EIS. Additional alternatives generated by the FCC, other agencies, and the public might warrant consideration too. Potential alternatives the FCC could consider through the public NEPA process include: negotiating a co-location on the existing, adjacent CusterTel cell tower; constructing a similar (shorter) height tower; negotiating cell repeater offered by SIHA on top of Redfish Visitor Center with direct line of sight across Redfish Lake; and other options. The FCC cannot comply with NEPA if it fails to consider viable alternatives to AT&T's proposal in an EA or an EIS.

V. Denying the Petition Would Deprive the Public of Involvement

NEPA “serves the twin purposes of ensuring that (1) agency decisions include informed and careful consideration of environmental impact, and (2) agencies inform the public of that impact and enable interested persons to participate in deciding what projects agencies should approve and under what terms.” *Sierra Club v. U.S. Army Corps of Eng'rs*, 803 F.3d 31, 36–37 (D.C. Cir. 2015) (citing *Dep't of Transp. V. Pub. Citizen*, 541 U.S. 752, 768 (2004)). Without granting this Petition, the FCC will deprive the public of the opportunity to participate and decide whether the tower should be approved and under what terms.

Again, this is a matter of significant public interest, as shown in the Petition and in recent newspaper articles. *See* Exhibits B–H (enclosed). By granting the Petition, the FCC can solicit and consider public comment and use that information to make an informed and careful consideration of environmental impacts, as required by NEPA.

VI. The FCC Cannot Rely on Purported Benefits of the Tower to Avoid NEPA

AT&T points to various supposed benefits the tower will bring. Petitioner’s strongly disagree and note that the benefits AT&T claims are overstated, speculative, or even wrong. Moreover, the tower’s supposed benefits are irrelevant to this Petition. If the tower “may” have significant impacts, the FCC must conduct an environmental review by EA or EIS—no matter any benefits the tower may have. *See* 47 C.F.R. § 1.1307(c) & (d) and 40 C.F.R. 1501.6(a).

CONCLUSION

AT&T’s proposed tall tower in the heart of the Sawtooth National Recreation Area and within the view of the Redfish Lake Lodge easily “may” have significant environmental impacts and requires environmental review, public involvement, and consideration of alternatives under NEPA. The FCC should grant the Petition and require preparation of an EA or an EIS.

Dated this September 19th, 2022.

Respectfully Submitted,

/s/ Bryan Hurlbutt

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List of Enclosed Exhibits

Exhibit A

Jun. 30 – Jul. 2, 2021 email chain between Dina Bazzill Email, Josh Johnson, and others

Exhibit B

“AT&T pursuing revived Redfish cell tower plan, documents show,” Emily Jones, *Idaho Mountain Express* (Jul. 29, 2022)

Exhibit C

“How we got here: a 50-year history of Idaho’s Sawtooth Range,” Ian Max Stevenson and Nicole Blanchard, *Idaho Statesman* (Aug. 16, 2022)

Exhibit D

“50 years after Sawtooths were protected, new challenges arise. Is Idaho up to them?” Nicole Blanchard, *Idaho Statesman* (Aug. 20, 2022)

Exhibit E

“Check out these stunning photos from readers of the Sawtooth National Recreation Area,” Chadd Cripe, *Idaho Statesman* (Aug. 21, 2022)

Exhibit F

“What’s a national recreation area? Here’s how the Sawtooths fit into the U.S. system,” Shaun Goodwin, *Idaho Statesman* (Aug. 21, 2022)

Exhibit G

“It was love at first sight: Happy anniversary to the Sawtooth National Recreation Area,” Ed Cannady, *Idaho Statesman* (Aug. 22, 2022)

Exhibit H

“Analysis: It will take a new wave of supporters to preserve Idaho’s beloved Sawtooths,” Rocky Barker, *Idaho Statesman* (Aug. 22, 2022)