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## **RECENT NEPA RULING REQUIRES ENVIRONMENTAL REVIEW FOR 5G SMALL CELLS**

A recent court decision by the Washington DC Circuit Court of Appeals vacates a recent FCC order to exempt “small cell” wireless installations from the environmental review process required by the National Environmental Policy Act (NEPA).

As per the August 2019 ruling, any application for “small wireless telecommunication facilities” (sWTFs) installation is INCOMPLETE if it does not include the required NEPA assessment.

This affects the processing and approving of applications pertaining to all 4G and 5G small cell wireless communication facilities.

The DC Circuit judges published the following reasons for their ruling, concluding:

- The FCC failed to address that it was speeding densification “without completing its investigation of . . . health effects of low-intensity radiofrequency [microwave] radiation”
- The FCC did not adequately address the harms of deregulation
- The FCC did not justify its portrayal of those harms as negligible
- The FCC’s characterization of the Order as consistent with its longstanding policy was not “logical and rational.” . . . because the FCC mischaracterized the size, scale and footprint of the anticipated nationwide deployment of 800,000-unit network of sWTFs
- Such sWTFs are “crucially different from the consumer signal boosters and Wi-Fi routers to which the FCC compares them”
- “It is impossible on this record to credit the claim that [sWTF] deregulation will ‘leave little to no environmental footprint.’”
- The FCC fails to justify its conclusion that sWTFs “as a class” and by their “nature” are “inherently unlikely” to trigger potential significant environmental impacts.

This means that the county must stop:

- 1) the processing of any and all sWTF applications,
- 2) the placement of any new sWTF,
- 3) the construction of any new sWTF, and
- 4) the modification of any sWTF that would result in the addition of any antenna, or in the increase in any Effective Radiated Power from the sWTF.

The full court order can be found here: <https://ehtrust.org/wp-content/uploads/Court-Opinion.pdf>