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

In the Matter of	)	
	)	
Implementation of State and Local Governments'	)	WT Docket No. 19-250
Obligation to Approve Certain Wireless Facility	)	
Modification Requests Under Section 6409(a) of	)	RM-11849
the Spectrum Act of 2012	)	

DECLARATORY RULING AND NOTICE OF PROPOSED RULEMAKING

Adopted: June 9, 2020 **Released: June 10, 2020**

Comment Date: 20 days after publication in the Federal Register
Reply Date: 30 days after publication in the Federal Register

By the Commission: Chairman Pai and Commissioners O'Rielly and Carr issuing separate statements; Commissioners Rosenworcel and Starks dissenting and issuing separate statements.

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I. INTRODUCTION

1. Today, we continue our efforts to facilitate the deployment of 5G networks—and the economic opportunity that they enable—in every community. To reach all corners of our nation, 5G networks must use a range of spectrum bands, from low to high frequencies, and a variety of physical infrastructure, from small cells to macro towers. To meet these needs, the Commission's spectrum policy

has focused on making available a wide range of low-, mid-, and high-band spectrum.[1] Similarly, the Commission's infrastructure policy has focused on updating our regulations to reflect new technology like small cells. Most notably, the Commission has modernized its approach to federal historic preservation and environmental review governing wireless infrastructure to accommodate small cell technology[2] and has addressed outlier conduct at the State and local government level that needlessly slowed down and increased the costs of deploying new small cells and modified wireless facilities.[3] We have seen a significant acceleration of wireless builds in the wake of those decisions. At the same time, there remain additional barriers to wireless infrastructure deployment that merit our consideration.

2. These barriers affect not just small cell deployment. Indeed, we know that providers of 5G networks will not reach all Americans solely by deploying small cell technology. We therefore also must focus on ensuring that our infrastructure regulations governing macro towers align with the critical need to upgrade existing sites for 5G networks, particularly in rural areas, where small cell deployment may be less concentrated.[4] As the record in this proceeding shows, ongoing uncertainty regarding the application of existing federal law to aspects of State and local government review of modifications to

[1] *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, WT Docket No. 17-200, Report and Order, Order of Proposed Modification, and Orders, FCC 20-67 (May 14, 2020); *Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Report and Order, 34 FCC Rcd 5446 (2019); *Auction of Priority Access Licenses for the 3550-3650 MHz Band, Comment Sought on Competitive Bidding Procedures for Auction 105*, AU Docket No. 19-244, Public Notice, 34 FCC Rcd 9215 (OEA/AU 2019); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020); *Wireless Telecommunications Bureau Announces that Applications for Auction 103 Licenses are Accepted for Filing*, Public Notice, DA 20-461, 2020 WL 2097298 (WTB Apr. 30, 2020).

[2] *See, e.g.*, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Second Report and Order, 33 FCC Rcd 3102 (2018) (*2018 NEPA/NHPA Order*) (streamlining environmental and historic preservation review procedures and clarifying cases in which fees are required for Tribal review), *aff'd in part, rev'd in part*, *United Keetoowah Band of Cherokee Indians, v. FCC*, 933 F.3d 728 (D.C. Cir. 2019) (affirming the FCC's changes in the *2018 NEPA/NHPA Order* to tribal involvement in Section 106 review and denying request to vacate the *Order* in its entirety while granting petitioners' request to vacate the portion of the decision that exempted small cells from review under the National Environmental Policy Act and the National Historic Preservation Act).

[3] *See, e.g.*, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, Declaratory Ruling and Third Report & Order, 33 FCC Rcd 9088, 9096-100, paras. 23-28, 32 (2018) (*2018 Small Cell Order*) (clarifying state and local legal requirements that may have the effect of prohibiting service under 47 U.S.C. §§ 253, 332(c)(7)), pets. for review pending, *Sprint Corp. v. FCC*, *et al.* (9th Cir).

[4] Certain residents and representatives of rural areas have expressed support in the record for our efforts to accelerate deployment of wireless infrastructure. *See, e.g.*, Letter from Denis Pitman, Chairman, Donald W. Jones, Member, and John Ostlund, Member, Board of County Commissioners for Yellowstone County, MT, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849 (filed May 28, 2020); Letter from Travis W. Jones, Chief, Broadview Rural Fire District, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849 (filed June 1, 2020); Letter from John Prinkki to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849 (filed June 2, 2020); Letter from Paul Anderes, Commissioner, Union County, OR, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849 (filed May 27, 2020); Letter from Michelle Erickson-Jones to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849 (filed June 1, 2020); Letter from Clinton Loss, President, Montana Emergency Medical Services Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849 (filed June 4, 2020); Letter from Marian J. Orr, Mayor, City of Cheyenne, WY, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM 11849 (filed Apr. 23, 2020); Rocky Mountain Farmers Union (@RMFUnion), Twitter (May 19, 2020, 8:13 PM), https://twitter.com/RMFUnion/status/1262899253229256705; Billings, MT Chamber of Commerce (@ChamberBillings), Twitter (May 19, 2020, 7:16 PM), https://twitter.com/ChamberBillings/status/1262884844129812483.

existing wireless equipment remains a deterrent to the rapid deployment of 5G wireless infrastructure. We are committed to working with State and local governments to facilitate the deployment of advanced wireless networks in all communities consistent with the decisions already made by Congress, which we expect will usher in a new era of American entrepreneurship, productivity, economic opportunity, and innovation for years to come.

3. Therefore, in this *Declaratory Ruling and Notice of Proposed Rulemaking*, we clarify the meaning of our rules implementing Congress' decisions in section 6409(a) of the Spectrum Act of 2012,[5] which recognized the efficiency of using existing infrastructure for the expansion of advanced wireless networks. Those rules set forth a streamlined process for State and local government review of applications to deploy wireless telecommunications equipment on existing infrastructure.[6] Under this framework, a State or local government shall approve within 60 days any request for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.[7]

4. Our clarifications are necessary to ensure fidelity to the language of those rules and the decisions Congress made in section 6409(a) that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."[8] Specifically, our *Declaratory Ruling* clarifies our rules regarding when the 60-day shot clock for State or local government review of modifications of existing structures commences.[9] We also clarify what constitutes a "substantial change" in the physical dimensions of wireless infrastructure under our rules, and the extent to which certain elements of a proposed modification to existing infrastructure affect the eligibility of that proposed modification for streamlined State or local government review under section 6409(a).[10] Finally, we further streamline our historic preservation and environmental review process to eliminate a redundant and unnecessary element by clarifying that when the FCC and applicants have entered into a memorandum of agreement to mitigate effects on historic properties a subsequent environmental assessment addressing such effects is not required.[11]

5. In the *Notice of Proposed Rulemaking*, we seek comment on whether changes to our rules regarding excavation outside the boundaries of an existing tower site, including the definition of the boundaries of a tower "site," would advance the objectives of section 6409(a).[12]

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[5] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, title VI (Spectrum Act of 2012), § 6409(a), 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)).

[6] *See* 47 U.S.C. § 1455(a); 47 CFR § 1.6100; *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket No. 13-238 and 13-32, WC Docket No. 11-59, Report and Order, 29 FCC Rcd 12865, 12922-66, paras. 135-241 (2014) (*2014 Infrastructure Order*), *aff'd*, *Montgomery Cty. v. FCC*, 811 F.3d 121 (4th Cir. 2015).

[7] 47 U.S.C. § 1455(a)(1); *see* 47 CFR § 1.6100 (b)(7), (c); *2014 Infrastructure Order*, 29 FCC Rcd at 12940-58, paras. 182-204, 205-21.

[8] 47 U.S.C. § 1455(a)(1).

[9] 47 CFR § 1.6100(c)(2)-(4); *2014 Infrastructure Order*, 29 FCC Rcd at 12955-58, paras. 211-221.

[10] 47 CFR § 1.6100(b)(7)(i), (iii), (v), (vi); *2014 Infrastructure Order*, 29 FCC Rcd at 12944-47, 12949-51, paras. 188-94, 200, 204.

[11] *See* 47 CFR §§ 1.1307(a), 1.1308, 1.1311; *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission* (Wireless Facilities Nationwide Programmatic Agreement), 47 CFR pt. 1, Appx. C.

[12] 47 CFR § 1.6100(b)(7)(iv); 47 CFR § 1.6100(b)(6).

II. BACKGROUND

6. Under Section 6409(a) of the Spectrum Act, Congress determined that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."[13] Congress intended this provision of the Spectrum Act to advance wireless service by expediting the deployment of the network facilities needed to provide wireless services.[14]

7. In 2014, the Commission adopted the *2014 Infrastructure Order*, which, among other things, codified rules to implement section 6409(a).[15] Commission rules provide that a State or local government must approve an eligible facilities request within 60 days of the date on which an applicant submits the request.[16] The Commission defined the term "eligible facilities request" as "[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) Collocation of new transmission equipment; (ii) Removal of transmission equipment; or (iii) Replacement of transmission equipment."[17] The Commission's rules provide that changes are "substantial" if they: exceed defined limits on increases in the height or girth of the structure or the number of associated equipment cabinets, involve excavation or deployment on ground outside a structure's current site, defeat the concealment elements of the preexisting structure, or violate conditions previously imposed by the local zoning authority.[18] The Commission also established procedures for when the 60-day shot clock for review may be tolled, as well as a "deemed granted" remedy in the event that states and localities fail to act on an eligible facilities request within the 60-day window.[19] In recent years, the Commission has taken additional actions to streamline review by State and local governments of wireless infrastructure.[20]

8. In August and September of 2019, WIA and CTIA filed separate Petitions for Declaratory Ruling asking, among other things, for the Commission to make certain clarifications to streamline the section 6409(a) process,[21] and WIA filed a Petition for Rulemaking seeking changes to

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[13] 47 U.S.C. § 1455(a).

[14] *See* H.R. Rep. No. 112-399, at 136 (2012). A section-by-section analysis of the JOBS Act, a precursor to the Spectrum Act of 2012, was submitted in the Congressional Record during floor debate of the Middle Class Tax Relief and Job Creation Act of 2012. The analysis explains that the precursor section to section 6409(a) was intended to "streamline[] the process for siting of wireless facilities by preempting the ability of State and local authorities to delay collocation of, removal of, and replacement of wireless transmission equipment." 157 Cong. Rec. 2055 (2012) (statement of Rep. Fred Upton).

[15] 47 CFR § 1.6100; *2014 Infrastructure Order,* 29 FCC Rcd at 12922-65, paras. 135-241.

[16] 47 CFR § 1.6100(c); *2014 Infrastructure Order*, 29 FCC Rcd at 12952, 12955-57, paras. 206, 211, 212, 215.

[17] 47 CFR § 1.6100(b)(3). The statutory definition of "eligible facilities request" is slightly different. *See* 47 U.S.C. § 1455(a). Our use of the term eligible facilities request in this order relies on the definition set forth in the rule. *See also 2014 Infrastructure Order*, 29 FCC Rcd at 12944-45, 12955, paras. 188, 211.

[18] 47 CFR § 1.6100(b)(7)(i)-(vi).

[19] *Id.* § 1.6100(c)(2)-(4).

[20] *See 2018 Small Cell Order*, 33 FCC Rcd at 9096-100, paras. 23-28, 32; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, WC Docket No. 17-84, Third Report & Order and Declaratory Ruling, 33 FCC Rcd 7705, 7775, 7777-79, paras. 140, 145-46 (2018) (*2018 Moratorium Order*) pets. for review pending, *American Elec. Power v. FCC*, et al. (9th Cir.).

[21] Petition of Wireless Infrastructure Association for Declaratory Ruling, WT Docket No. 19-250, at 2-4 (filed Aug. 27, 2019), https://ecfsapi.fcc.gov/file/109180312204232/19-250%20WIA%20Ex%20Parte%20(9-18-19).pdf (WIA Petition for Decl. Ruling); Petition of CTIA for Declaratory Ruling, WT Docket No. 19-250, WC Docket No. 17-84 at 2 (filed Sept. 6, 2019), https://ecfsapi.fcc.gov/file/1091954184161/190906%20CTIA%20Infrastructure%20PDR%20Final.pdf (CTIA

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section 1.6100 of the Commission's rules.[22] The petitioners and individual wireless service providers assert that localities are misinterpreting the requirements of section 6409(a) and our implementing rules.[23] They contend that these misinterpretations are delaying 5G deployment and other needed infrastructure upgrades, and they urge us to clarify aspects of the Commission's rules implementing section 6409(a).[24]

9. Specifically, WIA's Petition for Declaratory Ruling asks the Commission to clarify: (1) when the section 6409(a) shot clock begins to run; and (2) whether the shot clock and "deemed granted remedy" apply to all authorizations necessary to deploy wireless infrastructure.[25] It also asks the Commission to clarify: (1) the definitions of "concealment elements," "equipment cabinets," and "current site;" (2) when a change to the size or height of an antenna is a "substantial change; (3) the interpretation of the separation clause in section 1.6100(b)(7)(i); (4) what are the "conditions associated with the siting approval" under section 1.6100(b)(7)(vi); and (5) that legal, non-conforming structures do not *per se* constitute substantial changes.[26] Additionally, WIA asks the Commission to clarify that localities may not issue conditional approvals under section 6409(a), nor may they needlessly impose processes to delay section 6409(a) approval.[27] CTIA's Petition requests clarification of the terms "concealment elements," "equipment cabinets," and "base station," under section 1.6100(b)(7), and it asks the Commission to find that applicants may lawfully construct facilities or make modifications if a locality has not issued all permits within the 60-day section 6409(a) shot clock and an application is deemed granted.[28]

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Petition for Decl. Ruling). Although WIA and CTIA filed their Petitions for Declaratory Ruling in WT Docket No. 17-79, that proceeding does not address issues arising under section 6409(a) of the Spectrum Act. Rather, that proceeding focuses on wireless infrastructure deployment issues under sections 253 and 332(c)(7) of the Communications Act, the National Environmental Policy Act, and the National Historic Preservation Act. Thus, the Public Notice opening this proceeding directed parties to use new WT Docket No. 19-250 for filings addressing the section 6409(a) issues raised in WIA's and CTIA's petitions. *See Wireless Telecommunications Bureau and Wireline Competition Bureau Seek Comment on WIA Petition For Rulemaking, WIA Petition For Declaratory Ruling and CTIA Petition For Declaratory Ruling*, WT Docket No. 19-250, Public Notice, 34 FCC Rcd 8099, 8099 & n.4 (WTB/WCB 2019) (*WIA/CTIA Petitions Public Notice*).

[22] Petition of Wireless Infrastructure Association for Rulemaking, File No. RM-11849, https://ecfsapi.fcc.gov/file/108273047516225/WIA%20Petition%20for%20Rulemaking%20(8-27-19).pdf, (filed Aug. 27, 2019) (WIA Petition for Rulemaking). WIA's Petition for Rulemaking asks the FCC to amend section 1.6100 of the rules to determine that a compound expansion (i.e., excavation outside the current boundaries of leased or owned properties surrounding a tower site) is a "substantial change" under section 6409(a) only if excavation occurs more than 30 feet from a tower site boundary. The Petition for Rulemaking also asks the FCC to adopt rules requiring that (1) any fees charged for processing eligible facilities requests represent no more than a reasonable approximation of actual and direct costs incurred; and (2) an applicant's failure to pay disputed fees is not a valid basis for denial or refusal to process an eligible facilities request. WIA Petition for Rulemaking at 9-13.

[23] *See, e.g.*, WIA Petition for Decl. Ruling at 2; CTIA Petition for Decl. Ruling, at 3-4, 7-9; AT&T Comments at 2, 5; Competitive Carriers Association (CCA) Comments at 2; Crown Castle Comments at 4-6; CTIA Comments at 2-3, 6; CTIA Reply at 5-6; Extenet Comments at 21; Free State Comments at 2; T-Mobile Comments at 3, 6-7; WIA Comments at 3.

[24] WIA Petition for Decl. Ruling at 5-7; CTIA Petition for Decl. Ruling at 4-5. *See, e.g.*, CTIA Petition for Decl. Ruling at i-ii ("While the Commission's rules implementing Sections 6409 and 224 have played a vital role in promoting wireless infrastructure deployment, experience with these rules in the years since their adoption has identified areas of uncertainty and inconsistent application that slow down deployment and undermine Congressional and Commission intent.").

[25] WIA Petition for Decl. Ruling at 5-8.

[26] *Id.* at 9-10, 13, 16-20.

[27] *Id.* at 20, 21.

[28] CTIA Petition for Decl. Ruling at 9-16. CTIA also asks the Commission to clarify provisions of section 224 of the Communications Act related to accessing light poles, accessing space on poles, and pole attachment agreements.
(continued….)

10. Local governments allege that the current rules and processes are working well and that they are making efforts to comply with section 6409(a) and to process applications expeditiously.[29] They maintain that they have no interest in thwarting wireless network upgrades or delaying the deployment of appropriate facilities. They further claim that, to the extent their reviews are delayed at all, most of the delays are caused by applicants' errors[30] or their contractors' delays,[31] rather than by any improper local government review practices. They contend that the industry parties' arguments and proposals are premised on vague, unsubstantiated, and often false allegations that fail to identify specific localities or provide sufficiently concrete descriptions of their alleged violations.[32]

III. DECLARATORY RULING

11. In this *Declaratory Ruling*, we clarify several key elements that determine whether a modification request qualifies as an eligible facilities request that a State or local government must approve within 60 days, and we clarify when the 60-day shot clock for review of an eligible facilities request commences. These interpretations provide greater certainty to applicants for State and local government approval of wireless facility modifications, as well as to the reviewing government agencies,[33] and these interpretations should accelerate the deployment of advanced wireless networks.[34]

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CTIA Petition for Decl. Ruling at 20-28. The portion of CTIA's Petition for Declaratory Ruling concerning pole attachments under section 224 of the Communications Act is being considered in WC Docket No. 17-84 and is not a subject of this *Declaratory Ruling*.

[29] *See, e.g.*, City of Huntington Beach Comments at 1; NATOA Comments at 7; NATOA Reply at 3; City of Newport News Comments at 2; New York City Comments at 2; National League of Cities (NLC) Comments at 7; NLC Reply at 6-7; San Francisco Reply at 2-3; Seattle Comments at 1.

[30] *See, e.g.*, San Diego Comments at 4-5 (summarizing survey finding that more than 70% of eligible facilities requests processed by 8 jurisdictions since 2014 required at least two incomplete notices before the applicant provided all needed information, adding an average of 29 days to the process; about 20% required a third notice, adding an average of 31 days; and 5% required a fourth notice, adding an average of 40 days); *id.* at 10-11 (examples of applicant misconduct include a provider's leaving small cell applications on the counter at town hall and later sending a letter asserting that the shot clock had commenced). The City of San Diego filed comments and reply comments jointly with 33 other municipal and county governments, referring to themselves collectively as the "Western Communities Coalition." For purposes of simplicity and easy identification, we refer to this group of commenters as "San Diego" throughout. *See also* NLC Comments at 27 (stating that Montgomery County, MD completes section 6409(a) review, on average, within 60 days, but about 24 of those days are spent waiting for applicants to correct errors, and more than half of eligible facilities requests require at least one request for submission of missing information).

[31] NLC Comments at 4-5 (asserting that from January through October 2019, the City of Portland, Oregon received 82 small wireless facilities permit applications, including 72 subject to section 6409(a), and that 17 of the 50 applications that the city had finished reviewing were not picked up by a contractor for a least a month after the city approved them); San Diego Comments at 5 (reporting that, based on the 650 eligible facilities requests that the City of San Diego reviewed pursuant to section 6409(a), applicants' contractors picked up building permits about 129 days after the city issued them, on average—approximately three times the length of time that the city took to process and approve them). *See also* Seattle Comments at 4-6 (asking the Commission to examine the problematic practices and processes employed by wireless companies and their contractors).

[32] *See, e.g.*, San Diego Comments at 1-3, 9; NLC Comments at 2-3; NLC Reply at 2-3 (industry parties fail to respond to documented information submitted by localities).

[33] We expect that the industry will work cooperatively with localities who wish to further streamline or adjust their policies to comport with our clarifications to the Commission's rules. *See, e.g.*, Letter from Nancy Werner, General Counsel, NATOA et al., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 2 (filed May 22, 2020) (NATOA May 22, 2020 *Ex Parte* Letter) (asking the Commission to delay consideration of the item to later in the year and stating that the *Declaratory Ruling* would "dramatically impact the way that local governments across the nation manage their eligible facilities request applications"); Letter from Robert C. May, Michael D. Johnston, Dr. Jonathan L. Kramer, Counsel for Beaverton, Oregon et al., Telecom Law Firm PC, and
(continued….)

12. Specifically, we clarify that:

- The 60-day shot clock in section 1.6100(c)(2) begins to run when an applicant takes the first procedural step in a locality's application process and submits written documentation showing that a proposed modification is an eligible facilities request;
- The phrase "with separation from the nearest existing antenna not to exceed twenty feet"

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Kenneth Fellman, Gabrielle A. Daley, Counsel for Boulder, CO et al., Kissinger & Fellman, P.C., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 2 (filed June 2, 2020) (asking the Commission to delay consideration of the current item and explaining that localities would need to adapt local practices, policies, and regulations to implement to adjust to the Commission's actions); Letter from Stephen Isler, Mayor, Town of Berwyn Heights, MD, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 1 (filed June 2, 2020) (stating that a delay in adopting the *Declaratory Ruling* will "prevent the unnecessary diversion of scarce resources to adapt to the Commission's new rule clarifications").

[34] *See* Letter from John A. Howes, Jr., Government Affairs Counsel, WIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 3 (filed June 1, 2020) (WIA June 2020 *Ex Parte* Letter) (noting importance of Commission action "because, now more than ever, Americans are demanding better coverage and using more bandwidth. Over the past few months, network usage has surged as most Americans have been confined to their homes during the COVID-19 coronavirus pandemic."); Letter from Sarah K. Leggin, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 2 (filed June 1, 2020) (CTIA June 2020 *Ex Parte* Letter) (explaining that the Commission's clarifications "will have a meaningful impact on the speed of deployment and the ability of localities, states, and industry to work together in a cooperative manner"); Letter from Steven O. Vondran, Executive Vice President and President, U.S. Tower, American Tower, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 1-2 (filed May 19, 2020) (noting that the Commission's clarifications "will help speed the deployment of advanced wireless communication technologies throughout America at a time when American families are relying on wireless networks more than ever" during "the COVID-19 pandemic."). In light of these significant benefits to wireless infrastructure deployment, we decline to delay these clarifications. *See, e.g.*, NATOA May 22, 2020 *Ex Parte* Letter; Letter from Kit Kuhn, Mayor, City of Gig Harbor, WA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 1 (filed June 1, 2020). WIA's and CTIA's petitions seeking clarifications of the section 6409(a) rules have been pending for more than nine months. The petitions were filed in August and September of 2019; WTB sought comment on the petitions on September 13, 2019. *WIA/CTIA Petitions Public Notice*, 34 FCC Rcd 8099; Federal Communications Commission, Comment Sought on WIA Petitions for Declaratory Ruling and Rulemaking and CTIA Petition for Declaratory Ruling, Advance Notice of Proposed Rulemaking, 84 Fed. Reg. 50810 (Sept. 26, 2019). Over 70 localities, states, or organizations representing their interests have filed more than 650 pages of comments or letters. *See* WT Docket No. 19-250. The Declaratory Ruling addresses long-standing issues that have frustrated wireless deployments for years, and commenters in this proceeding have previously filed in this and other dockets about the issues addressed in this Declaratory Ruling. *See, e.g.,* San Diego Comments at 41-44 (raising concerns that granting petitioners' request could allow an unlimited number of equipment cabinets to be added to a structure); NLC Comments at 25-30 (arguing that no changes should be made to the 6409(a) shot clock rules and discussing petitioners request that a "good faith effort" should start the 60-day shot clock); NLC Comments at 18 (arguing that concealment elements should not be only those identified as such at the time of approval); San Diego Comments at 37-39 (arguing against "retroactive limitations on concealment" and in favor of "local authority to continue to regulate aesthetics of deployment"); NLC Comments at 16-18 (arguing against a "narrow" definition of "concealment"); San Diego Comments at 30-36 (same); San Diego Comments at 47-48 (arguing that petitioners' requested changes would not solve the ambiguity regarding allowable height increases); NLC Comment at 2 (stating that the petitioners' seek rule changes, not mere clarifications). *See also* Letter from Stephen Traylor, Executive Director, NATOA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Attach. at 13-15 (filed June 15, 2017) (attaching a 2014 filing discussing section 6409(a) that argued for giving localities authority to impose more conditions on wireless infrastructure and arguing against changes to the shot clock rules); Bellevue, Bothell, Burien, Ellensburg, Gig Harbor, Kirkland, Mountlake Terrace, Mukilteo, Normandy Park, Puyallup, Redmond and Walla Walla, WA Comments, WT Docket No. 17-79 (June 14, 2017) (describing ambiguity regarding concealment in the context of small cells and section 6409(a) and asking "that the Commission explicitly acknowledge that a small cell facility by very definition is a concealment element under 6409(a) regulations.").

in section 1.6100(b)(7)(i) allows an increase in the height of the tower of up to twenty (20) feet between antennas, as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of a tower;

- The term "equipment cabinets" in section 1.6100(b)(7)(iii) does not include relatively small electronic components, such as remote radio units, radio transceivers, amplifiers, or other devices mounted on the structure, and up to four such cabinets may be added to an existing facility per separate eligible facilities request;
- The term "concealment element" in section 1.6100(b)(7)(v) means an element that is part of a stealth-designed facility intended to make a structure look like something other than a wireless facility, and that was part of a prior approval;
- To "defeat" a concealment element under section 1.6100(b)(7)(v), a proposed modification must cause a reasonable person to view a structure's intended stealth design as no longer effective; and
- The phrase "conditions associated with the siting approval" may include aesthetic conditions to minimize the visual impact of a wireless facility as long as the condition does not prevent modifications explicitly allowed under section 1.6100(b)(7)(i)-(iv) (antenna height, antenna width, equipment cabinets, and excavations or deployments outside the current site) and so long as there is express evidence that at the time of approval the locality required the feature and conditioned approval upon its continuing existence.

13. Certain parties contend that we lack legal authority to adopt the rulings requested in the petitions, which they contend do not just clarify or interpret the rules established in 2014 but also change them, requiring that we issue a Notice of Proposed Rulemaking followed by a Report and Order.[35] As an initial matter, we note that we are not adopting all of the rulings requested in WIA's and CTIA's petitions for declaratory ruling because we find incremental action to be an appropriate step at this juncture, particularly given, as mentioned above, that the Commission has continued to take steps to ease barriers to deployment of wireless infrastructure since adopting rules to implement section 6409(a).[36] Our determinations in this *Declaratory Ruling* are intended solely to interpret and clarify the meaning and scope of the existing rules set forth in the *2014 Infrastructure Order*, in order to remove uncertainty and in light of the differing positions of the parties on these questions.[37] In addition, we find it appropriate to initiate a *Notice of Proposed Rulemaking* regarding tower site boundaries and excavation or deployment outside the boundaries of an existing tower site, in order to consider whether modifications of our rules are needed to resolve current disputes. We intend, with these steps, to continue to advance the same goals that led the Commission to adopt regulations implementing section 6409(a) in the first instance—to avoid

[35] *See, e.g.*, NLC Comments at ii, 2 (stating that the interpretations requested by WIA and CTIA "are not 'clarifications' – these are, in fact, substantial changes to the Section 6409(a) regime, and inconsistent with . . . the Commission's prior rulings" – and consequently, the Commission "cannot proceed purely on the basis of these petitions [by Declaratory Ruling], and should instead advance a clear proposal of its own, consistent with the APA") (citing *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92 (2015)); San Diego Comments at 1, 3 (same).

[36] For example, we do not address WIA's and CTIA's requests for clarification that the shot clock and deemed granted rules apply to all permits relating to a proposed modification, including authorizations relating to compliance with health and safety rules. WIA Petition for Decl. Ruling at 2; CTIA Petition for Decl. Ruling at 3-4, 7-9. Nor do we address CTIA's request for clarification of the permissible increases in the height of base stations. CTIA Petition for Decl. Ruling at 15-16. We do, however, clarify some of the limitations raised by WIA that apply to "conditions of approval" under section 1.6100(b)(7)(vi). WIA Petition for Decl. Ruling at 14-16, 19-24. Additionally, as noted herein, we offer other clarifications and seek comment on rule changes.

[37] In a few instances, we also provide further guidance on the interpretation of the underlying statute with regard to issues that the rules and the *2014 Infrastructure Order* do not directly address.

ambiguities leading to disputes that could undermine the goals of the Spectrum Act, i.e., to advance wireless broadband service.[38]

A. Commencement of Shot Clock

14. Section 1.6100(c)(2) provides that the 60-day review period for eligible facilities requests begins "on the date on which an applicant submits a request seeking approval."[39] If the local jurisdiction "fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted."[40] The *2014 Infrastructure Order* discusses the procedures that local governments need to implement in order to carry out their obligations to approve eligible facilities requests within 60 days;[41] it does not, however, define the date on which an applicant is deemed to have submitted an eligible facilities request for purposes of triggering the 60-day shot clock.

15. There is evidence in the record that some local jurisdictions effectively postpone the date on which they consider eligible facilities requests to be duly filed (thereby delaying the commencement of the shot clock) by treating applications as incomplete unless applicants have complied with time-consuming requirements. Such requirements include meeting with city or county staff, consulting with neighborhood councils, obtaining various certifications, or making presentations at public hearings.[42] While some stakeholders may have assumed that, after the *2014 Infrastructure Order*, local governments would develop procedures designed to review and approve covered requests within a 60-day shot clock period,[43] many have not done so and instead continue to require applicants to apply for forms of authorizations that entail more "lengthy and onerous processes" of review.[44] In such jurisdictions, applicants may need to obtain clearance from numerous, separate municipal departments, which could make it difficult to ascertain whether or when the shot clock has started to run.[45]

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[38] *See 2014 Infrastructure Order*, 29 FCC Rcd at 12922-26, paras. 135-44.

[39] 47 CFR § 1.6100(c)(2); *see also id.* § 1.6100(c)(3) ("The 60-day [shot clock] period begins to run when the application is filed. . . ."); *2014 Infrastructure Order*, 29 FCC Rcd at 12957, para. 216 ("[I]f an application covered by Section 6409(a) has not been approved by a State or local government within 60 days *from the date of filing*, accounting for any tolling, . . . the reviewing authority will have violated Section 6409(a)'s mandate to approve and not deny the request, and the request will be deemed granted") (emphasis added).

[40] 47 CFR § 1.6100(c)(4); *see also 2014 Infrastructure Order*, 29 FCC Rcd at 12957, para. 216 (noting that the 60-day "timeframe sets an absolute limit that—in the event of a failure to act— results in a deemed grant.").

[41] *2014 Infrastructure Order*, 29 FCC Rcd at 12955-58, paras. 212-13, 215-21.

[42] *See, e.g.*, Crown Castle Comments at 21 & n.51; AT&T Comments at 13, n.35 (citing *Douglas Cty. v. Crown Castle USA, Inc.*, 411 F. Supp. 3d 1176, 1182 (D. Colo. 2019) (noting county's characterization of carrier's filing as a "'Presubmittal Review Request,' not a formal EFR application"), *amended and superseded on other grounds*, No. 18-cv-03171-DDD-NRN, 2020 WL 109208 (D. Colo. Jan. 9, 2020)).

[43] *2014 Infrastructure Order*, 29 FCC Rcd at 12956, para. 214.

[44] *See, e.g.*, WIA Petition for Decl. Ruling at 8-9; T-Mobile Comments at 17 & n.64 (citing T-Mobile Reply Comments, WT Docket No. 13-238 (filed Mar. 5, 2014), Attach. A (Declaration of John L. Zembrusky) (identifying municipalities that lack section 6409(a) procedures and that insist on full-scale zoning review)).

[45] *See, e.g.*, T-Mobile Reply at 4-5 (describing municipal ordinances or informal processes in Richmond, CA, Torrance, CA, and Chapel Hill, NC, that require applicants to obtain building permits either before or after the eligible facilities request shot clock runs); Crown Castle Comments at 5-6 (describing the processes of a township in New York, a county in California, and town in Massachusetts that each require review by multiple municipal departments before a building permit will be approved); CTIA Petition for Decl. Ruling at 18 & n.41 (discussing several localities that require "sequential" approvals, in which a locality will issue a conditional use permit or other document that approves the eligible facilities request, and then also require an applicant to obtain a building permit or other authorization, which the locality claims is not subject to the section 6409(a) shot clock).

16. To address uncertainty regarding the commencement of the shot clock, we clarify that, for purposes of our shot clock and deemed granted rules, an applicant has effectively submitted a request for approval that triggers the running of the shot clock when it satisfies *both* of the following criteria: (1) the applicant takes the first procedural step that the local jurisdiction requires as part of its applicable regulatory review process under section 6409(a), and, to the extent it has not done so as part of the first required procedural step, (2) the applicant submits written documentation showing that a proposed modification is an eligible facilities request.[46]

17. By requiring that an applicant take the first procedural step required by the locality, our goal is to give localities "considerable flexibility" to structure their procedures for review of eligible facilities requests,[47] but prevent localities from "impos[ing] lengthy and onerous processes not justified by the limited scope of review contemplated" by section 6409(a).[48] In taking the first procedural step that the local jurisdiction requires as part of its applicable regulatory review process, applicants demonstrate that they are complying with a local government's procedures. The second criterion—requiring applicants to submit written documentation showing that the proposed modification is an eligible facilities request—is necessary because localities must have the opportunity to review this documentation to determine whether the proposed modification is an eligible facilities request that must be approved within 60 days.[49] We anticipate that the documentation sufficient to start the shot clock under our criteria might include elements like a description of the proposed modification and an explanation of how the proposed modification is an eligible facilities request.[50] We find that these criteria strike a reasonable balance between local government flexibility and the streamlined review envisioned by section 6409(a).[51]

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[46] We provide this limited guidance in order to resolve uncertainty about what the Commission intended by its reference to when an applicant "submits a request seeking approval under this section." Although as noted above interested parties have received notice and extended opportunity to comment on these proposals, this guidance does not constitute a legislative rule, and we disagree with commenters that a further rulemaking would be required. *See, e.g.*, NATOA Reply at 5 (arguing that a "good faith" standard would be "a change to—not a clarification of—the current rule"); Letter from Nancy Werner, General Counsel, NATOA, et. al. to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 et al., at 2 (filed Jun. 2, 2020) (NATOA June 2, 2020 *Ex Parte* Letter) (asserting that that clarification of what certain terms means should be preceded with notice and comment and codified in the Commission's rules); San Diego Comments at 6-8. The localities' comments are either directed at relief not granted in this *Declaratory Ruling* and are therefore outside its scope, or critical of interpretations that are exempt from the Administrative Procedures Act's notice-and-comment requirements as "a declaratory order to terminate a controversy or remove uncertainty." *See* 5 U.S.C. § 554(e). *See also*, *e.g.*, *American Mining Congress v. Mine Safety and Health Org.*, 995 F.2d 1106, 1112 (D.C. Cir. 1993) (upholding agency interpretive rules finding that certain X-ray readings qualify as "diagnoses" of lung disease within the meaning of agency's regulations and observing that "[a] rule does not, in this inquiry, become an amendment [to an existing legislative rule] merely because it supplies crisper and more detailed lines than the authority being interpreted").

[47] *2014 Infrastructure Order*, 29 FCC Rcd at 12956, para. 214 & n.595.

[48] *Id.* at 12955, para. 212.

[49] *Id.* at 12956-57, paras. 215-16 (60 days is sufficient for eligible facilities request review).

[50] Commenters have provided examples of the type of documentation that they submit with their applications, including a checklist showing that the proposed modifications do not meet any of the criteria for a substantial change in the physical dimensions of the structure. *See* Letter from Thomas S. Anderson, Senior Attorney, Crown Castle, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 2-3, Attach., Appx B at 9 (filed June 2, 2020) (Crown Castle June 2020 *Ex Parte* Letter); Letter from John A. Howes, Jr., Government Affairs Counsel, WIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 3 (filed June 1, 2020) (WIA June 2020 *Ex Parte* Letter).

[51] *Cf.* WIA Petition for Decl. Ruling at 8-9 (seeking ruling that "the Section 6409(a) shot clock begins to run once an applicant" makes "a good faith attempt to seek the necessary government approvals" by "submitting an EFR under any reasonable process," *i.e.*, "upon initial written submission in the case where a state or local government requires any type of pre-application submission or meetings."). Similarly, a number of providers request a ruling that the (continued….)

18. In addition, we find that further clarifications are needed to achieve our goal of balancing local government flexibility with the streamlined review envisioned by section 6409(a). First, we clarify that a local government may not delay the triggering of the shot clock by establishing a "first step" that is outside of the applicant's control or is not objectively verifiable. For example, if the first step required by a local government is that applicants meet with municipal staff before making any filing, the applicant should be able to satisfy that first step by making a written request to schedule the meeting—a step within the applicant's control. In this example, the 60-day shot clock would start once the applicant has made a written request for the meeting and the applicant also has satisfied the second of our criteria (documentation). While we do not wish to discourage meetings between applicants and the local governments, as we recognize that such consultations may help avoid errors that localities have identified as leading to delays,[52] such meetings themselves should not be allowed to cause delays or prevent these requests from being timely approved. As an additional example, a local government could not establish as its first step a requirement that an applicant demonstrate that it has addressed all concerns raised by the public, as such a step would not be objectively verifiable.

19. Second, we clarify that a local government may not delay the triggering of the shot clock by defining the "first step" as a combination or sequencing of steps, rather than a single step. For example, if a local government defines the first step of its process as separate consultations with a citizens' association, a historic preservation review board, and the local government staff, an applicant will trigger the shot clock by taking any one of those actions, along with satisfying the second of our criteria (documentation).[53] Once the shot clock has begun, it would not be tolled if the local government were to deny, delay review of, or require refiling of the application on the grounds that the local government's separate consultation requirements were not completed.[54] While we expect applicants to act in good faith to fulfill reasonable steps set forth by a local government that can be completed within the 60 day period,[55] the local government would bear responsibility for ensuring that any steps in its process, as well as the substantive review of the proposed facility modification, are all completed within 60 days. If not, the eligible facilities request would be deemed granted under our rules.

(Continued from previous page)
shot clock is not tolled by mandatory pre-application meetings or public hearings. *See, e.g.*, CTIA Comments at 12-13; Crown Castle Comments at 21-22; T-Mobile Comments at 4, 17; WISPA Comments at 6. Numerous providers support these proposals. *See, e.g.*, CTIA Comments at 13; AT&T Comments at 12-14; Crown Castle Comments at 22-23; Nokia Comments at 5-6; T-Mobile Comments at 16; Verizon Comments at 8-9; WISPA Comments at 6. By specifying concrete steps that are more specific and verifiable than the "good faith" standard that WIA proposed, we believe we will facilitate compliance by both localities and applicants. *See, e.g.*, NATOA Comments at 6 (criticizing WIA's proposed "good faith" standard); San Diego Comments at 6-8 (same).

[52] *See, e.g.*, NLC Comments at 25-26; San Diego Comments at 29-30; Seattle Comments at 2 (asserting that applicants' errors account for far more delays in the review process for eligible facilities requests than improper review processes and arguing that pre-application meetings help applicants avoid errors and thus expedite review).

[53] 47 CFR § 1.6100(c)(1).

[54] *See 2014 Infrastructure Order*, 29 FCC Rcd at 12957, para. 217 ("[A]n initial determination of incompleteness tolls the running of the [shot clock] period only if the State or local government provides notice to the applicant in writing within 30 days of the application's submission [and]. . . clearly and specifically delineate[s] the missing information in writing. . . . Further, consistent with the documentation restriction established above, *the State or municipality may only specify as missing [such]information and supporting documents that are reasonably related to determining whether the request meets the requirements of Section 6409(a).*") (emphasis added). *See also* 47 CFR § 1.6100(c)(1) (setting forth the documentation required to be submitted by the eligible facilities request applicant); 47 CFR § 1.6100(c)(3) (setting forth criteria for tolling of the shot clock).

[55] *See, e.g.*, NATOA *Ex Parte* Letter at 3 (raising concerns that an applicant could delay a meeting set by the locality to thwart the locality's process); *see also* Letter from Colin Byrd, Mayor, City of Greenbelt, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 2 (filed June 1, 2020) (Greenbelt *Ex Parte* Letter) (same).

20. Third, we clarify that a local government may not delay the start of the shot clock by declining to accept an applicant's submission of documentation intended to satisfy the second of our criteria for starting the shot clock. In addition, a local government may not delay the start of the shot clock by requiring an applicant to submit documentation that is not reasonably related to determining whether the proposed modification is an eligible facilities request.[56] We clarify how our documentation rules apply in the context of the shot clock to provide certainty that unnecessary documentation requests do not effectively delay the shot clock as part of the local government's "first step," even if providing that documentation would be within the applicant's control and could be objectively verified. For example, if a locality requires as the first step in its section 6409(a) process that an applicant meet with a local zoning board, that applicant would not need to submit local zoning documentation as well in order to trigger the shot clock.

21. Fourth, we note that a local government may use conditional use permits, variances, or other similar types of authorizations under the local government's standard zoning or siting rules, in connection with the consideration of an eligible facilities request. We clarify, however, that requirements to obtain such authorizations may not be used by the local government to delay the start of or to toll the shot clock under the section 6409(a) process. The shot clock would begin once the applicant takes the first step in whatever process the local government uses in connection with reviewing applications subject to section 6409(a) and satisfies the second of our criteria (documentation).[57] Subsequently, if the locality rejects the applicant's request to modify wireless facilities as incomplete based on requirements relating to such permits, variances, or similar authorizations, the shot clock would not be tolled and the application would be deemed granted after 60 days if the application constitutes an eligible facilities request under our rules.[58]

22. Fifth, we note that some jurisdictions have not established specific procedures for the review and approval of eligible facilities requests under section 6409(a). In those cases, we clarify that, for purposes of triggering the shot clock under section 6409(a), the applicant can consider the first

[56] *See* 47 CFR § 1.6100(c)(1). This rule provides that "[w]hen an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities." *See also 2014 Infrastructure Order*, 29 FCC Rcd at 12956, para. 214 & n.595 (clarifying documentation requirements).

[57] We reject localities' suggestions that the shot clock should not commence until an applicant submits documentation required for all necessary permits, as such an approach is inconsistent with federal law. *See* 47 CFR § 1.6100(c)(1)-(2); *see also* Letter from Gerard Lederer, Joseph Van Eaton, Gail Karish, Andrew McCardle, Counsel for the City of Wilmington, DE et al., Best & Krieger LLP, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 21-22 (filed Jun. 2, 2020) (Wilmington *Ex Parte* Letter) (suggesting that applicants should be required to submit documentation for all necessary permits before the shot clock starts). To the extent localities point to the *2018 Small Cell Order* as a reason that localities should be able to require documentation for all permits before the shot clock commences, we note that the applicable statutes provide different regimes for eligible facilities requests under section 6409 as compared to siting requests for small cells under section 332. *See* Wilmington *Ex Parte* Letter at 21-22 (arguing that the *2018 Small Cell Order* "suggests that on submission of an application, shot clocks begin running on all permits required to deploy; it follows that all materials relevant to an application must be submitted with the application").

[58] Localities may only toll the shot clock "by mutual agreement" or if the locality "determines that the application is incomplete." *See* 47 CFR § 1.6100(c)(3) (implementing section 6409(a) and setting forth the process for a locality to toll the timeframe for incompleteness); *see also* Wilmington *Ex Parte* Letter at 22 (filed Jun. 2, 2020) (arguing that the Commission should clarify the continued applicability of the "notice of incompleteness procedure" in section 1.6100(c)(3)(i)).

procedural step to be submission of the type of filing that is typically required to initiate a standard zoning or siting review of a proposed deployment that is not subject to section 6409(a).[59]

23. We find that these clarifications serve to remove uncertainty about the scope and meaning of various provisions of section 1.6100 consistent with the text, history, and purpose of the *2014 Infrastructure Order*.[60] We also note that the commencement of the shot clock does not excuse the applicant from continuing to follow the locality's procedural and substantive requirements (to the extent those requirements are consistent with the Commission's rules), including obligations "to comply with generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety."[61]

B. Height Increase for Towers Outside the Public Rights-of-Way

24. Adding new collocated equipment near or at the top of an existing tower can be an efficient means of expanding the capacity or coverage of a wireless network without the disturbances associated with building an entirely new structure. Adding this equipment to an existing tower would change the tower's physical dimensions, but if such a change is not "substantial," then a request to implement it would qualify as an eligible facilities request, and a locality would be required to approve it. Section 1.6100(b)(7)(i) provides that a modification on a tower outside of the public rights-of-way would cause a substantial change if it "increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater."[62]

25. Commenters assert that they have two different interpretations of the meaning of this language in section 1.6100(b)(7)(i). Industry commenters read section 1.6100(b)(7)(i) as allowing a new antenna to be added without being a substantial change if there is no more than twenty feet in

[59] Comparable modification requests might include applications to install, modify, repair, or replace wireless transmission equipment on a structure that is outside the scope of section 6409(a), or to mount cable television, wireline telephone, or electric distribution cables or equipment on outdoor towers or poles. Where the first step in the process is submission of the type of filing that is typically required for comparable modification requests, we note that applicants are not required to file any documentation that is inconsistent with the Commission's rules for eligible facilities requests under section 6409(a). *See* 47 CFR § 1.6100(c)(1).

[60] We note that sections 253 and 332(c)(7) generally prohibit local governments from making regulatory decisions that "prohibit or have the effect of prohibiting" the provision of personal wireless service or other forms of telecommunications service by any provider. *See* 47 U.S.C. §§ 253(a) and 332(c)(7)(B)(i)(I). Accordingly, localities' regulatory decisions affecting eligible facilities requests are subject to sections 253 and 332(c)(7) as well as section 6409(a). Unless one of the narrow statutory safe harbors applies, localities may not use procedural mechanisms to deny covered requests and may not deny individual eligible facilities requests in a manner that "materially inhibits the provision of such [telecommunications] services," including by materially inhibiting providers' ability to "densify[] a wireless network, introduce[e] new services or otherwise improv[e] service capabilities." *2018 Small Cell Order*, 33 FCC Rcd at 9104-05, para. 37. Nor may localities regulate in a manner that creates *de facto* moratoria in the context of eligible facilities requests, such as "frequent and lengthy delays in. . . issuing permits and processing applications" or imposing "onerous conditions." *2018 Moratorium Order*, 33 FCC Rcd at 7779-80, paras. 149-150. While some delay in deployment does not constitute a *de facto* moratorium, "[s]ituations cross the line into *de facto* moratoria where the delay continues for an unreasonably long or indefinite amount of time such that providers are discouraged from filing applications, or the action or inaction has the effect of preventing carriers from deploying certain types of facilities or technologies." *Id.* at 7781, para. 150.

[61] *2014 Infrastructure Order*, 29 FCC Rcd at 12951, para. 202.

[62] 47 CFR § 1.6100(b)(7)(i) (emphasis added). Section 1.6100(b)(7)(i) establishes different standards governing whether a "substantial change" would result from an increase in the height of a tower located outside of the public rights-of-way versus an increase in the height of a base station (*i.e.*, a structure other than a tower that supports collocated transmission equipment) or a tower located within the rights-of-way. Our focus here is on the definition of height increases for towers outside of the rights-of-way.

"separation" between the existing and new antennas, and that the size/height of the new antenna itself is irrelevant to the concept of "separation."[63] Localities appear to be of the view, however, that such an interpretation strains what the statute and regulations would permit—creating different standards for antenna height depending on where it is located and leading to indefinite increases in antenna height under a streamlined process not designed for that purpose.[64] Adding an antenna array to a tower out of the public right-of-way that increases the height of the tower would not be considered a substantial change, by itself, if there is no more than twenty feet of separation between the nearest existing antenna. The phrase "separation from the nearest existing antenna" means the distance from the top of the highest existing antenna on the tower to the *bottom* of the proposed new antenna to be deployed above it. Thus, when determining whether an application satisfies the criteria for an eligible facilities request, localities should not measure this separation from the top of the existing antenna to the *top* of the new antenna, because the height of the new antenna itself should not be included when calculating the allowable height increase. Rather, under our interpretation, the word "separation" refers to the distance from the top of the existing antenna to the bottom of the proposed antenna. Interpreting "separation" otherwise to include the height of the new antenna could limit the number of proposed height increases that would qualify for section 6409(a) treatment, given typical antenna sizes and separation distances between antennas, which would undermine the statute's objective to facilitate streamlined review of modifications of existing wireless structures.[65]

26. Specifically, and in response to commenters' arguments regarding the language in section 1.6100(b)(7)(i), we find that our resolution today is consistent with the long-established interpretation of the comparable standard set forth in the 2001 *Collocation Agreement* for determining the maximum size of a proposed collocation that is categorically excluded from historic preservation review.[66] Commission staff explained, in a fact sheet released in 2002, that under this provision of the *Collocation Agreement*, if a "150-foot tower… already [has] an antenna at the top of the tower, the tower height could increase by up to 20 feet [*i.e.*, the "separation" distance] *plus* the height of a new antenna to be located at the top of the tower" without constituting a substantial increase in size.[67] That standard was the source of the standard for the allowable height increases for towers outside the rights-of-way that the Commission adopted in the *2014 Infrastructure Order*.[68]

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[63] *See* CTIA Comments at 10-11; Crown Castle Comments at 15-16; CTIA and Crown Castle urge the Commission to clarify that, in the case of a tower, section 1.6100(b)(7)(i) allows a new antenna to be added without constituting a substantial change if there is up to 20 feet in "separation" between the existing and new antennas. They assert that the size/height of the new antenna itself is irrelevant to the concept of "separation." Both commenters argue that this interpretation is consistent with the Collocation NPA and is needed to counter locality attempts to include the dimensions of the new antenna itself into the 20 feet limit.

[64] *See* San Diego Comments at 47-48; *see also* San Diego Reply at 80-82 (arguing that the requested clarification would eliminate any maximum height limit for towers).

[65] *Contra* Letter from Jud Ashman, Mayor, City of Gaithersburg, MD, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 2 (stating that Gaithersburg has generally interpreted the 10% or 20 feet height increase to include the new antenna).

[66] *See* National Programmatic Agreement for the Collocation of Wireless Antennas, 47 CFR pt. 1, Appx. B (*Collocation Agreement*), § I.E (a collocation on an existing tower causes a "substantial increase in the size of the tower" if it would increase the tower's existing height by an amount more than "10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas.").

[67] *Wireless Telecommunications Bureau and Mass Media Bureau Announce the Release of a Fact Sheet Regarding the March 16, 2001 Antenna Collocation Programmatic Agreement*, Public Notice, 17 FCC Rcd 508 (2002).

[68] *2014 Infrastructure Order*, 29 FCC Rcd at 12946, para. 192.

27. Our interpretation also aligns with the clarification sought by WIA and other industry parties.[69] We reject the argument that this interpretation creates irrational inconsistences among height increase standards depending on the type of structure and whether a tower is inside or outside the rights-of-way.[70] As we discussed in the *2014 Infrastructure Order*, limits on height and width increases should depend on the type and location of the underlying structure.[71] We therefore adopted the *Collocation Agreement's* "substantial increase in size" test for towers outside the rights-of-way,[72] and we adopted a different standard for non-tower structures.[73] Localities are rearguing an issue already settled in the *2014 Infrastructure Order* when they urge that the same height increase standard should apply to different types of structures.[74] We also reject the argument that this interpretation would lead to virtually unconstrained increases in the height of such towers.[75] These concerns are unwarranted because the*2014 Infrastructure Order* already limits the cumulative increases in height from eligible modifications and nothing in this *Declaratory Ruling* changes those limits.[76]

28. Our clarification is limited to section 1.6100(b)(7)(i) and the maximum increase in the height of a tower outside the rights-of-way allowed pursuant to an eligible facilities request under section 6409(a). We remind applicants that "eligible facility requests covered by section 6409(a) must comply with any relevant Federal requirement, including any applicable Commission, FAA, NEPA, or section 106 [historic review] requirements."[77]

C. Equipment Cabinets

29. To upgrade to 5G and for other technological and capacity improvements, providers often add equipment cabinets to existing wireless sites. Section 1.6100(b)(7)(iii) provides that a proposed modification to a support structure constitutes a substantial change if "it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets."[78] Some localities suggest that telecommunications transmission equipment manufactured with outer protective covers can be "equipment cabinets" under section 1.6100(b)(7)(iii) of the rules.[79] We

[69] WIA Petition for Decl. Ruling at 17-18; CTIA Comments at 10-11; Crown Castle Comments at 15-16.

[70] *Cf.* San Diego Comments at 47-48 (arguing that WIA's interpretation would create an inconsistency between the height increase standard for towers outside public rights-of-way and the standard for other structures).

[71] *2014 Infrastructure Order*, 29 FCC Rcd at 12946, para. 192.

[72] 47 CFR § 1.6100(b)(7)(i); *2014 Infrastructure Order*, 29 FCC Rcd at 12946, para. 192; *Collocation Agreement* § I.C(1).

[73] *2014 Infrastructure Order*, 29 FCC Rcd at 12946-47, para. 193; *see* 47 CFR § 1.6100(b)(7)(i) (stating a substantial change would occur for other eligible support structures when, "it increases the height of the structure by more than 10% or more than ten feet, whichever is greater").

[74] 47 CFR § 1.6100(b)(7)(i). *See 2014 Infrastructure Order*, 29 FCC Rcd at 12946-48, paras. 193-95 (explaining reasons for different standards).

[75] San Diego Reply at 80-82 (quoting *2014 Infrastructure Order*, 29 FCC Rcd at 12949, para. 197).

[76] 47 CFR § 1.6100(b)(7)(i)(A); *2014 Infrastructure Order*, 29 FCC Rcd at 12948-49, paras. 196-97 (stating that "our substantial change criteria for changes in height should be applied as limits on cumulative changes; otherwise, a series of permissible small changes could result in an overall change that significantly exceeds our adopted standards.").

[77] *2014 Infrastructure Order*, 29 FCC Rcd at 12951, para. 203.

[78] *See* 47 CFR § 1.6100(b)(7)(iii). Section 1.6100(b)(7)(iii) imposes additional restrictions on equipment cabinet installations that constitute a substantial change in the context of towers in the public rights-of-way and base stations either within or outside the public rights-of-way. Petitioners do not raise issues regarding these additional provisions.

[79] San Diego Comments at 41-42, 44.

conclude that localities are interpreting "equipment cabinet" under section 1.6100(b)(7)(iii) too broadly to the extent they are treating equipment itself as a cabinet simply because transmission equipment may have protective housing. Nor does a small piece of transmission equipment mounted on a structure become an "equipment cabinet" simply because it is more visible when mounted above ground.[80] Consistent with common usage of the term "equipment cabinet" in the telecommunications industry, small pieces of equipment such as remote radio heads/remote radio units, amplifiers, transceivers mounted behind antennas, and similar devices are not "equipment cabinets" under section 1.6100(b)(7)(iii) if they are not used as physical containers for smaller, distinct devices.[81] Moreover, we note that section 1.6100(b)(3) defines an "eligible facilities request" (i.e., a request entitled to streamlined treatment under section 6409(a)) as any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station and that involves the collocation, removal or replacement of "transmission equipment."[82] Interpreting "transmission equipment," an element required in order for a modification to qualify for streamlined treatment, to be "equipment cabinets," an element that is subject to numerical limits that can cause the modification not to qualify for streamlined treatment, would strain the intended purposes of sections 1.6100(b)(3) and 1.6100(b)(7)(iii). We do not address here other aspects of the definition of equipment cabinets on which industry commenters seek clarification.[83]

30. In addition, we clarify that the maximum number of additional equipment cabinets that can be added under the rule is measured for each separate eligible facilities request. According to WIA, one unidentified city in Tennessee interprets the term "not to exceed four cabinets" in section 1.6100(b)(7)(iii) as "setting a cumulative limit, rather than a limit on the number of cabinets associated with a particular eligible facilities request."[84] We find that such an interpretation runs counter to the text of section 1.6100(b)(7)(iii), which restricts the number of "new" cabinets per eligible facilities request. The city's interpretation ignores the fact that the word "it" in the rule refers to a "modification" and supports the conclusion that the limit on equipment cabinet installations applies separately to each eligible facilities request.[85]

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[80] *Contra id.* at 44 (stating, "CTIA suggests that the difference is the size and location of the equipment enclosure, not its function. To adopt the industry's definition is nonsensical given that it is the function that controls, and locational visibility matters. The industry omits the fact that RRUs located near the antennas creates substantial visible bulk, as do RRUs and associated equipment above ground, and that bulk is more visible than ground mounted cabinets or for new cabinets installed existing enclosures.").

[81] *Accord* CTIA Petition for Decl. Ruling at 13; WIA Petition for Decl. Ruling at 13; Crown Castle Comments at 11. *Cf.* San Diego Comments at 42 & n.114 (citing technical documents referring to equipment cabinets as containers for smaller devices).

[82] 47 CFR § 1.6100(b)(3).

[83] We find this relief to suffice at this stage and thus do not address the industry parties' contention that, in the portion of section 1.6100(b)(7)(iii) applicable to any eligible support structure, the term "equipment cabinets" applies only to cabinets installed on the ground and not to those mounted above ground level on the side of structures. *See* CTIA Petition for Decl. Ruling at 5, 13-14; WIA Petition for Decl. Ruling at 13-14; AT&T Comments at 8-10; Crown Castle Comments at 10-11; T-Mobile Comments at 4-5, 19-20; Verizon Comments at 9; *contra* San Diego Comments at 41-44; NLC Comments at 20-21.

[84] WIA Petition for Decl. Ruling at 13.

[85] This conclusion is also supported by the context of the rule as a whole. The number and size of preexisting cabinets are irrelevant to the limitation on equipment cabinets on eligible support structures, in contrast to the rest of the rule, which takes into account whether there are preexisting ground cabinets at the site and whether proposed new cabinets' volume exceeds the volume of preexisting cabinets by more than 10%. 47 CFR § 1.6100(b)(7)(iii). Wilmington's reliance on the cumulative height limit in section 1.6100(b)(7)(i)(A) undercuts its argument for a similar limit on equipment cabinets. Wilmington *Ex Parte* Letter at 15-17. The rule and *2014 Infrastructure Order* (continued….)

31. Several localities argue that this clarification would permit an applicant to add an unlimited number of new equipment cabinets to a structure so long as the applicant proposes adding them in increments of four or less.[86] We disagree that this clarification permits an unlimited number of cabinets on a structure. The text of section 1.6100(b)(7)(iii) limits the number of equipment cabinets per modification to no more than "the standard number of new equipment cabinets for the technology involved."

D. Concealment Elements

32. Section 1.6100(b)(7)(v) states that a modification "substantially changes" the physical dimensions of an existing structure if "[i]t would defeat the concealment elements of the eligible support structure."[87] The *2014 Infrastructure Order* provides that, "in the context of a modification request related to concealed or 'stealth'-designed facilities —*i.e.*, facilities designed to look like some feature other than a wireless tower or base station—any change that defeats the concealment elements of such facilities would be considered a 'substantial change' under Section 6409(a)."[88] The *2014 Infrastructure Order* notes that both locality and industry commenters generally agreed that "a modification that undermines the concealment elements of a stealth wireless facility, such as painting to match the supporting façade or artificial tree branches, should be considered substantial under Section 6409(a)."[89]

33. Stakeholders subsequently have interpreted the definition of "concealment element" and the types of modifications that would "defeat" concealment in different ways. Petitioners and industry commenters urge the Commission to clarify that the term "concealment element" only refers to "a stealth facility or those aspects of a design that were specifically intended to disguise the appearance of a facility, such as faux tree branches or paint color."[90] T-Mobile states that some localities are "proffering 'creative or inappropriate' regulatory interpretations of what a concealment element is."[91] Locality commenters counter that there is more to concealment than "fully stealthed facilities and semi-stealthed monopines."[92] They argue that the proposed changes would undermine the ability of local jurisdictions to enforce regulations designed to conceal equipment.[93] NLC asserts that many attributes of a site contribute to concealment, such as the "specific location of a rooftop site, or the inclusion of equipment in a particular architectural feature."[94] Locality commenters contend that limiting concealment elements to features

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explicitly establish a cumulative limit on height increases but notably omits such a limit on equipment cabinets. 47 CFR § 1.6100(b)(7)(i)(A); *2014 Infrastructure Order*, 29 FCC Rcd at 12948-49, paras. 196-97.

[86] See, e.g., Letter from John Caulfield, City Manager, City of Lakewood, WA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 1 (filed May 29, 2020) (Lakewood Ex Parte Letter); Greenbelt Ex Parte Letter at 2; NATOA June 2, 2020 Ex Parte Letter at 3.

[87] 47 CFR § 1.6100(b)(7)(v).

[88] *2014 Infrastructure Order*, 29 FCC Rcd at 12949-50, para. 200.

[89] *Id.* at 12949-50, para. 200.

[90] CTIA Petition for Decl. Ruling at 12; *see also* WIA Reply at 24; T-Mobile Comments at 4, 8; AT&T Comments at 7; ATC Comments at 9-10; Crown Castle Comments at 9-10.

[91] T-Mobile Comments at 7-8; *see also* AT&T Comments at 6-7; ATC Comments at 9-10; Crown Castle Comments at 8.

[92] NLC Comments at 17.

[93] Gwen Kennedy Comments at 1 (rec. Nov. 13, 2019) (filed on behalf of Loudoun County, Virginia) (Loudoun County Comments).

[94] NLC Comments at 17, 19.

identified in the original approval would negate land use requirements that were a factor in the original deployment but not specified as such.[95]

34. *Clarification of "Concealment Element."* We clarify that concealment elements are elements of a stealth-designed facility intended to make the facility look like something other than a wireless tower or base station.[96] The *2014 Infrastructure Order* defines "concealed or 'stealth'"-designed facilities as "facilities designed to look like some feature other than a wireless tower or base station," and further provides that any change that defeats the concealment elements of *such* facilities would be considered a substantial change under section 6409(a).[97] Significantly, the *2014 Infrastructure Order* identified parts of a stealth wireless facility such as "painting to match the supporting façade or artificial tree branches" as examples of concealment elements.[98] We agree with industry commenters that concealment elements are those elements of a wireless facility installed for the purpose of rendering the "appearance of the wireless facility as something fundamentally different than a wireless facility,"[99] and that concealment elements are "confined to those used in stealth facilities."[100]

35. We disagree with localities who argue that any attribute that minimizes the visual impact of a facility, such as a specific location on a rooftop site or placement behind a tree line or fence, can be a concealment element.[101] As localities acknowledged in comments they submitted in response to the *2013*

[95] NATOA Comments at 9; *see also* Chino Hills Comments at 2; NLC Comments at 18; NLC Reply at 6; Loudoun County Comments at 1. NATOA notes that many towers and collocations were approved "long before the enactment of Section 6409 and the Commission's Rules [and there] was no way for municipalities to know that the conditions of approval would be ignored if they did not use magic words adopted years later." NATOA Comments at 9; *see also* NLC Comments at 18; San Diego Comments at 38.

[96] *Contra* NATOA Comments at 8 (contending that Petitioners' requests for clarification are a "substantial change to the Rules that would unreasonably narrow the common meaning of 'concealment elements.'"); San Diego Comments at 31 ("The Petitioners' arguments attempt to expand the scope of eligible facilities requests by narrowing the definition of concealment elements."). The rules and *2014 Infrastructure Order* do not provide detailed guidance on when modifications "defeat the concealment elements" under section 1.6100(b)(7)(v), and we disagree that providing clarity on existing language constitutes a rule change. *Contra* Letter from Scott Hugill, City Manager, City of Mountainlake Terrace, to Marlene Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 2 (filed June 1, 2020).

[97] *2014 Infrastructure Order*, 29 FCC Rcd at 12950, para. 200.

[98] *Id.* at 12949-50, para. 200; *see also* WIA Petition for Decl. Ruling at 11 ("Faux tree branches serve no other purpose than to create the appearance that a tower is a tree. Painting a rooftop antenna to match the building serves no purpose other than to enhance the appearance of the building.").

[99] WIA Petition for Decl. Ruling at 11; *see also* AT&T Reply at 6 ("[T]he Commission should clarify [] that (1) 'concealment elements' refer only to the 'stealth' elements of a structure that disguise the structure as something other than a wireless site . . . ."); CCA Comments at 7-8 ("In the *2014 Order*, the Commission described concealment elements as those tailored to make wireless facilities 'look like some feature other than a wireless tower or base station,' and specifically identified 'painting to match the supporting façade' and 'artificial tree branches' as examples."); Letter from Cathleen Massey, Vice President of Regulatory Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 et. al., at 2 & n.6 (filed May 13, 2020) ("the Commission should clarify that 'concealment elements' means 'a stealth facility or those aspects of a deployment's design that were specifically intended to disguise the appearance of a facility'").

[100] CTIA Petition for Decl. Ruling at 10.

[101] *See* National League of Cities Comments at 16-17; *see also* NATOA Comments at 8-9. To the extent that municipalities argue that they have interpreted "concealment element" in the past differently from our clarification, this *Declaratory Ruling* should reduce the number of disputes between localities and applicants and help localities bring their procedures in compliance with section 6409(a). *See, e.g.*, Letter from Carol Helland, Director of Planning and Community Development, City of Redmond, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 1 (filed June 2, 2020); NATOA *Ex Parte* at 3.

Infrastructure NPRM, "local governments often address visual effects and concerns in historic districts not through specific stealth conditions, but through careful placement" conditions.[102] Our rules separately address conditions to minimize the visual impact of non-stealth facilities under section 1.6100(b)(7)(vi) governing "conditions associated with the siting approval."[103] The Commission narrowly defined concealment elements to mean the elements of a stealth facility, and no other conditions fall within the scope of section 1.6100(b)(7)(v).

36. We also clarify that, in order to be a concealment element under section 1.6100(b)(7)(v), the element must have been part of the facility that the locality approved in its prior review.[104] Our clarification that concealment elements must be related to the locality's prior approval is informed by the *2014 Infrastructure Order* and its underlying record, which assumed that "stealth" designed facilities in most cases would be installed at the request of an approving local government.[105] Further, in the *2014 Infrastructure Order*, the Commission stated that a modification would be considered a substantial increase if "it would defeat the *existing* concealment elements of the tower or base station."[106] We clarify that the term "existing" means that the concealment element existed on the facility that was subject to a prior approval by the locality. In addition, the record in the *2014 Infrastructure Order*, as relied upon by the Commission, characterized stealth requirements as identifiable, pre-existing elements in place before an eligible facilities request is submitted.[107]

37. Regarding the meaning of a prior approval in the context of an "existing" concealment element, we note that section 1.6100(b)(7)(i) provides that permissible increases in the height of a tower (other than a tower in the public rights-of-way) should be measured relative to a locality's original approval of the tower or the locality's approval of any modifications that were approved prior to the passage of the Spectrum Act.[108] We find it reasonable to interpret an "existing" concealment element relative to the same temporal reference points, which are intended to allow localities to adopt legitimate requirements for approval of an original tower at any time but not to allow localities to adopt these same requirements for a modification to the original tower (except for a modification prior to the Spectrum Act when localities would not have been on notice of the limitations in section 6409(a)).[109] In other words, the purpose of section 1.6100(b)(7)(v) is to identify and preserve prior local recognition of the need for such concealment, but not to invite new restrictions that the locality did not previously identify as

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[102] *See* City of Alexandria, Virginia; City of Arlington, Texas; City of Bellevue Washington; City of Boston, Massachusetts; City of Davis, California; City of Los Angeles, California; Los Angeles County, California; City of McAllen, Texas; Montgomery County, Maryland; City of Ontario, California; Town of Palm Beach, Florida; City of Portland, Oregon; City of Redwood City, California; City of San Jose, California; Village of Scarsdale, New York; City of Tallahassee, Florida; Texas Coalition of Cities for Utility Issues; Georgia Municipal Association; International Municipal Lawyers Association; and American Planning Association (Alexandria et al.) Reply to *2013 Infrastructure NPRM* at 18-19; *see also* Alexandria et al. Comments to *2013 Infrastructure NPRM* at 19.

[103] 47 CFR § 1.6100(b)(7)(vi).

[104] *See 2014 Infrastructure Order*, 29 FCC Rcd at 12945, 12949, paras. 188, 200.

[105] *Id.* at 12949-50, para. 200.

[106] *See id.* at 12945, para. 188 (emphasis added).

[107] *See 2013 Infrastructure NPRM*, 28 FCC Rcd at 14284, para. 127.

[108] 47 CFR § 1.6100(b)(7)(i)(A).

[109] By permitting localities to rely on concealment elements required when approving modifications of towers prior to the Spectrum Act, we address in part locality concerns about concealment conditions imposed on older structures after an original approval. *See, e.g.*, San Diego Comments at 38 (stating that WIA's request for clarification that concealment elements must have been named in the initial approval "would unfairly and retroactively punish both communities and providers who had no notice, and therefore no reason to expect that regulation would be premised upon such a requirement").

necessary. Accordingly, we clarify that under section 1.6100(b)(7)(v), a concealment element must have been part of the facility that was considered by the locality at the original approval of the tower or at the modification to the original tower, if the approval of the modification occurred prior to the Spectrum Act or lawfully outside of the section 6409(a) process (for instance, an approval for a modification that did not qualify for streamlined section 6409(a) treatment).

38. We are not persuaded by localities' arguments that our clarification would negate land use requirements that were a factor in the approval of the original deployment even if those requirements were not specified as a condition.[110] Our clarification does not mean that a concealment element must have been explicitly articulated by the locality as a condition or requirement of a prior approval. While specific words or formulations are not needed, there must be express evidence in the record to demonstrate that a locality considered in its approval that a stealth design for a telecommunications facility would look like something else, such as a pine tree, flag pole, or chimney. However, it would be inconsistent with the purpose of section 6409(a)—facilitating wireless infrastructure deployment—to give local governments discretion to require new concealment elements that were not part of the facility that was subject to the locality's prior approval.[111] We expect that this clarification will also promote the purpose of the rules to provide greater certainty to localities and applicants as to whether a concealment element exists.

39. *Clarification of "Defeat Concealment."* Next, we clarify that, to "defeat concealment," the proposed modification must cause a reasonable person to view the structure's intended stealth design as no longer effective after the modification. In other words, if the stealth design features would continue effectively to make the structure appear not to be a wireless facility, then the modification would not defeat concealment. Our definition is consistent with dictionary definitions and common usage[112] of the term "defeat" and is supported by the record.[113] Our clarification is necessary because, as industry commenters point out, some localities construe even small changes to "defeat" concealment, which delays deployment, extends the review processes for modifications to existing facilities, and frustrates the intent behind section 6409(a).[114]

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[110] NATOA Comments at 9.

[111] *Id.*; *see also* Chino Hills Comments at 2; NLC Comments at 18; NLC Reply at 6; Gwen Kennedy Comments at 1 (rec. Nov. 13, 2019) (filed on behalf of Loudoun County, Virginia) (Loudoun County Comments) (stating that the proposed clarifications would undermine the ability of local jurisdictions to enforce regulations designed to conceal equipment). NATOA insists that many towers and collocations were approved "long before the enactment of Section 6409 and the Commission's Rules [and there] was no way for municipalities to know that the conditions of approval would be ignored if they did not use magic words adopted years later." NATOA Comments at 9; *see also* NLC Comments at 18; San Diego Comments at 38 (stating that WIA's request for clarification that concealment elements must have been named in the initial approval "would unfairly and retroactively punish both communities and providers who had no notice, and therefore no reason to expect that regulation would be premised upon such a requirement").

[112] *See Defeat*, Black's Law Dictionary (11th ed. 2019) (*Defeat* means "2. To annul or render (something) void. 3. To vanquish; to conquer (someone or something). 4. To frustrate (someone or something).").

[113] *See* Crown Castle Comments at 9-10 (suggesting that, in order to defeat a concealment element, a modification "must entirely render the concealment void or useless"); AT&T Comments at 8 (stating that a modification must "materially change" the appearance of a concealment element for there to be "substantial change").

[114] T-Mobile Comments at 7-8; Crown Castle Comments at 9-10; CCA Comments at 5; *see also* ATC Reply at 6, n.13 (arguing that adoption of Petitioners' clarifications regarding "defeat" will "allow for appropriate, real world, case-by-case analysis of those elements which actually contribute to concealment"); AT&T Comments at 6-7; CTIA Comments at 8 ("localities are broadly treating the *entire structure* as a concealment element, or otherwise improperly invoking the rule to deem a modification to be substantial"); Crown Castle Comments at 8, n.20 (stating that there are "myriads" of ways that localities claim concealment is defeated, "even when not included in siting approval: increasing the height of a monopine; increasing the height of a light pole; failure to add screens to antenna; (continued….)

40. *Examples of Whether Modifications Defeat Concealment Elements*. We offer the following examples to provide guidance on concealment elements and whether or not they have been defeated to help inform resolution of disputes should they arise:

- In some cases, localities take the position that the placement of coaxial cable on the outside of a stealth facility constitutes a substantial change based on the visual impact of the cable. Coaxial cables typically range from 0.2 inches to slightly over a half-inch in diameter,[115] and it is unlikely that such cabling would render the intended stealth design ineffective at the distances where individuals would view a facility.[116]
- In other cases, localities have interpreted any change to the color of a stealth tower or structure as defeating concealment.[117] Such interpretations are overly broad and can frustrate Congress's intent to expedite the section 6409(a) process. A change in color must make a reasonable person believe that the intended stealth is no longer effective.[118] Changes to the color of a stealth structure can occur for many reasons, including for example, the discontinuance of the previous color. An otherwise compliant eligible facilities request will not defeat concealment in this case merely because the modification uses a slightly different paint color. Further, if the new equipment is shielded by an existing shroud that is not being modified, then the color of the equipment is irrelevant because it is not visible to the public and would not render an intended concealment ineffective. Therefore, such a change would not defeat concealment.[119]
- WIA reports that a locality in Colorado claims that a small increase in height on a stealth monopine, which is less than the size thresholds of section 1.6100(b)(7)(i)-(iv), defeats concealment and therefore constitutes a substantial change.[120] We clarify that such a

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any change to branches on a stealth tree; addition of opaque fencing; enclosing of equipment within shelters; increasing the width of a canister on a flagpole or utility pole; and external cabling on a non-camouflaged monopole").

[115] RS Components, Ltd., *Everything You Need to Know About Coaxial Cable*, https://uk.rs-online.com/web/generalDisplay.html?id=ideas-and-advice/coaxial-cable-guide.

[116] *See, e.g.* Letter from Jim Ferrell, Mayor, City of Federal Way, WA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-250 and RM-11849, at 2 (filed June 1, 2020) (presenting hypotheticals involving the visibility of coaxial cables).

[117] WIA Petition for Decl. Ruling at 3 ("In many cases, these requirements are not mandated by local codes but are imposed on an ad hoc basis by local jurisdictions."); T-Mobile Reply at 14; AT&T Reply at 6-7; NLC Reply at 17-18; *see also* Letter from Alexi Maltas, Senior Vice President and General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed July 12, 2019) (CCA 2019 Letter).

[118] The *2014 Infrastructure Order* noted that "a replacement of exactly the same dimensions could still violate concealment elements if it does not have the same camouflaging paint as the replaced facility." 29 FCC Rcd at 12949, para. 200, n.543. For such a change in paint color to defeat concealment, however, the color of the stealth tower must make a reasonable person believe that the modified facility will no longer resemble the stealth designed facility.

[119] In a further example, according to Crown Castle, two cities in California— San Diego and Cerritos—take the position that additions or modifications of antennas on faux trees defeat concealment even if the appearance of the faux tree remains the same. *See, e.g.*, Letter from Kenneth Simon, Senior Vice President and General Counsel, Crown Castle, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Aug. 10, 2018) (Crown Castle August 2018 *Ex Parte* Letter); *see also* T-Mobile Reply at 13. Additional faux branches would need to render the intended disguise (resembling a tree, in this example) ineffective in order to defeat concealment.

[120] WIA Petition for Decl. Ruling at 10.

change would not defeat concealment if the change in size does not cause a reasonable person to view the structure's intended stealth design (i.e., the design of the wireless facility to resemble a pine tree) as no longer effective after the modification.

- If a prior approval included a stealth-designed monopine that must remain hidden behind a tree line, a proposed modification within the thresholds of section 1.6100(b)(7)(i)-(iv) that makes the monopine visible above the tree line would be permitted under section 1.6100(b)(7)(v). First, the concealment element would not be defeated if the monopine retains its stealth design in a manner that a reasonable person would continue to view the intended stealth design as effective. Second, a requirement that the facility remain hidden behind a tree line is not a feature of a stealth-designed facility; rather it is an aesthetic condition that falls under section 1.6100(b)(7)(vi). Under that analysis, as explained in greater detail below, a proposed modification within the thresholds of section 1.6100(b)(7)(i)-(iv) that makes the monopine visible above the tree line likely would be permitted under section 1.6100(b)(7)(vi).

E. Conditions Associated with the Siting Approval

41. Section 1.6100(b)(7)(vi) states that a modification is a substantial increase if "[i]t does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.61001(b)(7)(i) through (iv)." Industry commenters argue that changes specifically allowed under section 1.6100(b)(7)(i)-(iv) should not constitute a substantial change under section 1.6100(b)(7)(vi).[121] For example, the record shows that some localities claim that small increases in the size of a structure, such as increasing its height or increasing the width of its cannister, are a substantial change because they wrongly characterize any increase to a structure's visual profile or negative aesthetic impact as defeating a concealment element—even if the size changes would be within the allowances under our rules.[122]

42. Conditions associated with the siting approval under section 1.6100(b)(7)(vi) may relate to improving the aesthetics, or minimizing the visual impact, of non-stealth facilities (facilities not addressed under section 1.6100(b)(7)(v)). However, localities cannot merely assert that a detail or feature of the facility was a condition of the siting approval; there must be express evidence that at the time of approval the locality required the feature and conditioned approval upon its continuing existence in order for non-compliance with the condition to disqualify a modification from being an eligible facilities request.[123] Even so, like any other condition under section 1.6100(b)(7)(vi), such an aesthetics-related

[121] T-Mobile Comments at 18-19; *see also* WIA Reply at 24-25.

[122] T-Mobile Comments at 9-10; *see also* Nokia Comments at 6-7; Crown Castle August 2018 *Ex Parte* Letter at 16 (claiming that a California locality treats the dimensions of "every aspect" of a project as a concealment element); WIA Petition for Decl. Ruling at 11 (stating that a city in California does not allow weatherproof enclosure expansions greater than 36 inches). Additionally, WIA offers examples of localities that take the position that any increase in height on a monopine, even if below the substantial change threshold of section 1.16100(b)(7)(i)-(iv), defeats concealment and therefore constitutes a substantial change. WIA Petition for Decl. Ruling at 10.

[123] Several localities argue that this clarification would place a requirement on a locality to show express evidence that a feature was required and that the locality conditioned approval on its continuing existence, in order for non-compliance with the condition to disqualify a modification from being an eligible facilities request. *See, e.g.*, Lakewood *Ex Parte* Letter at 2; Greenbelt *Ex Parte* Letter at 2; NATOA June 2, 2020 *Ex Parte* Letter at 4. Our clarification is a restatement of the basic principle that applicants should have clear notice of what is required by a condition and how long the requirement lasts. We clarify that in order for a locality to disqualify a modification as an eligible facilities request based on an applicant's noncompliance with a condition of the original approval, the locality must show that the condition existed at the time of the original approval. Such showing would demonstrate that the applicant was on notice that noncompliance with the condition could result in disqualification .

condition still cannot be used to prevent modifications specifically allowed under section 1.6100(b)(7)(i)-(iv) of our rules.[124] Consistent with "commonplace [] statutory construction that the specific governs the general," we clarify that where there is a conflict between a locality's general ability to impose conditions under (vi) and modifications specifically deemed not substantial under (i)-(iv), the conditions under (vi) should be enforced only to the extent that they do not prevent the modification in (i)-(iv).[125] In other words, when a proposed modification otherwise permissible under section 1.6100(b)(7)(i)-(iv) cannot reasonably comply with conditions under section 1.6100(b)(7)(vi), the conflict should be resolved in favor of permitting the modifications. For example, a local government's condition of approval that requires a specifically sized shroud around an antenna could limit an increase in antenna size that is otherwise permissible under section 1.6100(b)(7)(i). Under section 1.6100(b)(7)(vi), however, the size limit of the shroud would not be enforceable if it purported to prevent a modification to add a larger antenna, but a local government could enforce its shrouding condition if the provider reasonably could install a larger shroud to cover the larger antenna and thus meet the purpose of the condition.

43. By providing guidance on the relationship between section 1.6100(b)(7)(i)-(iv) and 1.6100(b)(7)(vi), including the limitations on conditions that a locality may impose, we expect there to be fewer cases where conditions, especially aesthetic conditions, are improperly used to prevent modifications otherwise expressly allowed under section 1.6100(b)(7)(i)-(iv).[126] We reaffirm that beyond the specific conditions that localities may impose through section 1.6100(b)(7)(vi), localities can enforce "generally applicable building, structural, electrical, and safety codes" and "other laws codifying objective standards reasonably related to health and safety."[127]

44. *Examples of Aesthetics Related Conditions*. Petitioners and both industry and locality commenters have provided numerous examples of disputes involving modifications to wireless facilities. Using examples from the record,[128] and assuming that the locality has previously imposed an aesthetic-related condition under section 1.6100(b)(7)(vi), we offer examples to provide guidance on the validity of the condition to decrease future disputes and to help inform resolution of disputes should they arise:

- If a city has an aesthetic-related condition that specified a three-foot shroud cover for a three-foot antenna, the city could not prevent the replacement of the original antenna with a four-foot antenna otherwise permissible under section 1.6100(b)(7)(i) because the new antenna cannot fit in the shroud. As described above, if there was express evidence that the shroud was a condition of approval, the city could enforce its shrouding condition if the provider reasonably could install a four-foot shroud to cover the new four-foot antenna. The city also could enforce a shrouding requirement that is not size-specific and that does not limit modifications allowed under section 1.6100(b)(7)(i)-(iv).
- T-Mobile claims that some localities consider existing walls and fences around non-camouflaged towers to be concealment elements that have been defeated if new

[124] *See, e.g.*, Crown Castle August 2018 *Ex Parte* Letter at 13 ("Imposing size-based 'concealment elements' is nothing more than an attempt to evade the specific, objective size criteria that the Commission adopted in the *2014 Infrastructure Order*."); *see also* AT&T Comments at 6-7 ("If such generic features as height, width, or equipment could be construed as concealment elements, the concealment exception would swallow the rule, nullifying the Section 6409(a) protections adopted by Congress."); T-Mobile Comments at 9; WIA Petition for Decl. Ruling at 10 ("[T]he record in this proceeding reflects that some jurisdictions are interpreting this language so broadly that the exception swallows the rule."); ATC Comments at 9.

[125] *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992).

[126] *See, e.g.*, *Douglas Cty. v. Crown Castle USA, Inc.*, 2020 WL 109208, Case No. 18-cv-03171 (D. Colo., Jan. 9, 2020).

[127] *2014 Infrastructure Order*, 29 FCC Rcd at 12951, para. 202.

[128] *See* San Diego Reply at 44-60 (pictures of multiple structures that commenters consider to be concealed).

equipment is visible over those walls or fences.[129] First, such conditions are not concealment elements; rather, they are considered aesthetic conditions under section 1.6100(b)(7)(vi). Such conditions may not prevent modifications specifically allowed by section 1.6100(b)(7)(i)-(iv). However, if there were express evidence that the wall or fence were conditions of approval to fully obscure the original equipment from view, the locality may require a provider to make reasonable efforts to extend the wall or fence to maintain the covering of the equipment.

- If an original siting approval specified that a tower must remain hidden behind a tree line, a proposed modification within the thresholds of section 1.6100(b)(7)(i)-(iv) that makes the tower visible above the tree line would be permitted under section 1.6100(b)(7)(vi), because the provider cannot reasonably replace a grove of mature trees with a grove of taller mature trees to maintain the absolute hiding of the tower. [130]
- In a similar vein, San Francisco has conditions to reduce the visual impact of a wireless facility, including that it must be set back from the roof at the front building wall.[131] San Francisco states that it will not approve a modification if the new equipment to be installed does not meet the set back requirement. Even if a proposed modification within the thresholds of section 1.6100(b)(7)(i)-(iv) exceeds the required set back, San Francisco could enforce its set back condition if the provider reasonably could take other steps to reduce the visual impact of the facility to meet the purpose of its condition.

F. Environmental Assessments After Execution of Memorandum of Agreement

45. The Commission's environmental rules implementing the National Environmental Policy Act categorically exclude all actions from environmental evaluations, including the preparation of an environmental assessment, except for defined actions associated with the construction of facilities that may significantly affect the environment.[132] Pursuant to section 1.1307(a) of the Commission's rules, applicants currently submit an environmental assessment for those facilities that fall within specific categories, including facilities that may affect historic properties protected under the National Historic Preservation Act.[133] Under our current process, an applicant submits an environmental assessment for

[129] Letter from Cathleen Massey, Vice-President of Regulatory Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 3-4 (filed Aug. 30, 2019) (T-Mobile 2019 Letter).

[130] We disagree with the argument of local authorities that this interpretation conflicts with how the Commission explained the *2014 Infrastructure Order* in a brief to the Fourth Circuit almost five years ago. Wilmington *Ex Parte* Letter at 2. In that brief, the Commission addressed the general question of whether previous reliance on a tree for concealment could be defeated by later installing an additional facility that rose above the tree line. *See* Brief for Respondents, *Montgomery County v. FCC*, Nos. 15-1240 et al. (4th Cir. filed July 20, 2015). The Commission's argument in that brief cannot be interpreted to make any *de minimis* increase above the tree line a substantial increase under the Commission's rule. Nor did it distinguish between the application of the concealment provisions of the rule to a "stealth" structure and the limitations in the rule applicable to aesthetic conditions. In any event, in light of extensive subsequent experience as documented in the record of this proceeding, we believe that the rule applicable to stealth facilities should be construed in each individual case to depend upon whether the design would be viewed as no longer effective in view of the modified facilities. *See also, e.g.*, *SNR Wireless LicenseCo, LLC v. FCC*, 868 F.3d 1021, 1037 (D.C. Cir. 2017) (staff level actions do not bind the agency as a whole); *Appalachian Power Co. v. Train*, 620 F.2d 1040, 1045-46 (4th Cir. 1980) (similar); *Malkan FM Associates v. FCC*, 935 F.2d 1313, 1319 (D.C. Cir. 1992) (similar).

[131] San Francisco Reply at 3.

[132] 47 CFR §§ 1.1306, 1.1307; *see also* 42 U.S.C. § 4321 *et seq.*

[133] 47 CFR § 1.1307(a).

facilities that may affect historic properties, even if the applicant has executed a memorandum of agreement[134] with affected parties to address those adverse effects.[135]

46. We clarify on our own motion that an environmental assessment is not needed when the FCC and applicants have entered into a memorandum of agreement to mitigate effects of a proposed undertaking on historic properties, consistent with section VII.D of the Wireless Facilities Nationwide Programmatic Agreement,[136] if the only basis for the preparation of an environmental assessment was the potential for significant effects on such properties. We expect this clarification should further streamline the environmental review process.

47. Section 1.1307(a)(4) of the Commission's rules requires an environmental assessment if a proposed communications facility may have a significant effect on a historic property.[137] The Commission adopted a process to identify potential effects on historic properties by codifying the Wireless Facilities Nationwide Programmatic Agreement as the means to comply with section 106 of the National Historic Preservation Act.[138] If adverse effects on historic properties are identified during this process, the Wireless Facilities Nationwide Programmatic Agreement requires that the applicant consult with the State Historic Preservation Officer and/or Tribal Historic Preservation Officer, and other interested parties to avoid, minimize, or mitigate the adverse effects.[139]

48. When such effects cannot be avoided, under the terms of the Wireless Facilities Nationwide Programmatic Agreement, the applicant, the State Historic Preservation Officer and/or Tribal Historic Preservation Officer, and other interested parties may proceed to negotiate a memorandum of agreement that the signatories agree fully mitigates all adverse effects. The agreement is then sent to Commission staff for review and signature.[140] Under current practice, even after a memorandum of agreement is executed, an applicant is still required to prepare an environmental assessment and file it with the Commission.[141] The Commission subsequently places the environmental assessment on public notice, and the public has 30 days to file comments/oppositions.[142] If the environmental assessment is determined to be sufficient and no comments or oppositions are filed, the Commission issues a Finding of No Significant Impact and allows an applicant to proceed with the project.[143]

49. In this *Declaratory Ruling* we clarify that an environmental assessment is unnecessary after an adverse effect on a historic property is mitigated by a memorandum of agreement.[144] Applicants

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[134] A memorandum of agreement is a mechanism to address adverse effects on historic properties or Indian religious sites. *See* Wireless Facilities Nationwide Programmatic Agreement at § VII.D.

[135] FCC, Tower and Antenna Siting, National Historic Preservation Act, The Nationwide Programmatic Agreements, https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/tower-and-antenna-siting.

[136] Wireless Facilities Nationwide Programmatic Agreement, 47 CFR pt. 1, Appx. C. The Wireless Facilities Nationwide Programmatic Agreement was executed by the Advisory Council on Historic Preservation (ACHP), the National Conference on State Historic Preservation Officers, and the FCC.

[137] 47 CFR § 1.1307(a)(4).

[138] *See* Wireless Facilities Nationwide Programmatic Agreement, 47 CFR pt. 1, Appx. C.

[139] Wireless Facilities Nationwide Programmatic Agreement at § VII.D.1.

[140] *Id.* at § VII.D.4.

[141] FCC, *Tower and Antenna Siting, National Historic Preservation Act, The Nationwide Programmatic Agreements*, https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/tower-and-antenna-siting.

[142] FCC, *Tower and Antenna Siting, The National Environmental Policy Act, FCC's NEPA Process*, https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/tower-and-antenna-siting.

[143] *Id*.

[144] *See* Council on Environmental Quality, Executive Office of the President, and Advisory Council on Historic Preservation, NEPA and NHPA: A Handbook for Integrating NEPA and Section 106 at 11, 21 (2013)

(continued….)

already are required to consider alternatives to avoid adverse effects prior to executing a memorandum of agreement.[145] 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.[146] This mitigation eliminates any significant adverse effects on a historic property, and each memorandum of agreement must include as a standard provision that the memorandum of agreement "shall constitute full, complete, and adequate mitigation under the NHPA . . . and the FCC's rules."[147]

50. We note that section 1.1307(a) requires an applicant to submit an environmental assessment if a facility "may significantly affect the environment," which includes facilities that may affect historic properties, endangered species, or critical habitats.[148] As a result of the mitigation required by a memorandum of agreement, we conclude that any effects on historic properties remaining after the agreement is executed would be below the threshold of "significance" to trigger an environmental assessment.[149] After the memorandum of agreement is executed, a proposed facility should no longer "have adverse effects on identified historic properties" within the meaning of section 1.1307(a)(4)[150] and, therefore, should no longer be within the "types of facilities that may significantly affect the environment."[151] If none of the other criteria for requiring an environmental assessment in section 1.1307(a) exist, then such facilities automatically fall into the broad category of actions that the Commission has already found to "have no significant effect on the quality of the human environment and are categorically excluded from environmental processing."[152] The Commission's rules should be read in light of the scope of our obligation under section 106 and the ACHP's rules, which explicitly state that such a memorandum of agreement "evidences the agency official's compliance with section 106."[153] We

(Continued from previous page)
https://ceq.doe.gov/docs/ceq-publications/NEPA_NHPA_Section_106_Handbook_Mar2013.pdf (2013 NHPA/NEPA Handbook).

[145] Standard language in the template of the FCC's memoranda of agreement provides that the applicant, "consistent with the FCC's environmental rules has considered and evaluated a number of alternatives for the project and concluded that these options are either unavailable . . . or do not meet the technical requirements necessary to satisfy the coverage needs of the telecommunications system to be supported by the antennas." FCC, *Tower and Antenna Siting, The Nationwide Programmatic Agreements*, https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/tower-and-antenna-siting.

[146] Wireless Facilities Nationwide Programmatic Agreement at §§ IV, V, VI, VII.

[147] This provision is standard language in the FCC's memoranda of agreement, and it is included in the template located on the Commission's website. *See* FCC, *Tower and Antenna Siting, National Historic Preservation Act, The Nationwide Programmatic Agreements*, https://www.fcc.gov/wireless/bureau-divisions/competition-infrastructure-policy-division/tower-and-antenna-siting.

[148] 47 CFR § 1.1307(a).

[149] *Id.*

[150] *Id.* § 1.1307(a)(4).

[151] *Id.* § 1.1307(a) (introductory paragraph).

[152] *Id.* § 1.1306(a); 2013 NHPA/NEPA Handbook at 21 ("New facilities and collocations that do not affect historic properties may be categorically excluded from NEPA."). We note that nothing in this *Declaratory Ruling* changes the scope or application of section 1.1307(c), which allows any person to submit a petition seeking an environmental assessment for any communications facility deployment otherwise categorically excluded, and (d), which allows a Bureau to require an applicant to submit an environmental assessment even if a proposed deployment would be otherwise categorically excluded. 47 CFR § 1.1307(c) and (d).

[153] 36 CFR § 800.6(b)-(c); *see also* 54 U.S.C. § 300101 *et seq.*

remind applicants that an environmental assessment is still required if the proposed project may significantly affect the environment in ways unrelated to historic properties.[154]

IV. NOTICE OF PROPOSED RULEMAKING

51. Section 1.6100(b)(7)(iv) provides that "[a] modification substantially changes the physical dimensions of an eligible support structure if . . . [i]t entails any excavation or deployment outside the current site[.]"[155] In other words, a proposed modification that entails any excavation or deployment outside the current site of a tower or base station is not eligible for section 6409(a)'s streamlined procedures. Section 1.6100(b)(6) defines "site" for towers outside of the public rights-of-way as "the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground."[156]

52. In its Petition for Declaratory Ruling, WIA requests that the Commission clarify that "current site," for purposes of section 1.6100(b)(7)(iv), is the *currently* leased or owned compound area.[157] Industry commenters argue that current "site" means the property leased or owned by the applicant at the time it submits an application to make a qualifying modification under section 6409(a).[158] Industry commenters state that their proposed clarification merely affirms the plain meaning of the rule.[159] They assert that such clarification is needed because many local governments interpret section 1.6100(b)(6) as referring to the original site and wrongly claim that a modification is not entitled to section 6409(a) if it entails any deployment outside of those original boundaries.[160]

53. WIA's Petition for Rulemaking also requests that the Commission amend its rules to establish that a modification would not cause a "substantial change" if it entails excavation or facility deployments at locations of up to 30 feet in any direction outside the boundaries of a macro tower compound.[161] Industry commenters contend that it is often difficult to collocate transmission equipment on existing macro towers without expanding the compounds surrounding those towers in order to deploy additional equipment sheds or cabinets on the ground.[162] They argue that such deployments are becoming increasingly necessary to house multiple carriers' facilities on towers built in the past to support the needs of a single carrier and to facilitate the extensive network densification needed for rapid 5G deployment.[163] WIA states that this proposal is consistent with the Wireless Facilities Nationwide Programmatic Agreement,[164] which excludes from section 106 historic preservation review "the construction of a

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[154] 47 CFR § 1.1307(a)(1)-(3), (6)-(8); *see also* note to section 1.1307(d) (requiring environmental assessment filings for certain proposed facilities that may affect migratory birds); Wilmington *Ex Parte* Letter at 23-24 (stating that if the Commission is going to eliminate the requirement for an environmental assessment addressing effects on historic properties when a memorandum of agreement is executed, it should clarify that it must still fully consider the potential for other environmental effects).

[155] 47 CFR § 1.6100(b)(7)(iv).

[156] *Id.* § 1.6100(b)(6).

[157] WIA Petition for Decl. Ruling at 9-11.

[158] *See, e.g.*, *id.* at 18; CTIA Comments at 11; AT&T Comments at 9; Crown Castle Comments at 18.

[159] AT&T Comments at 19; Crown Castle at 18; CTIA Comments at 11; WIA Comments at 11.

[160] *See* AT&T Comments at 19; American Tower Comments at 19; Crown Castle Comments at 28.

[161] WIA Petition for Rulemaking at 3-11.

[162] ATC Comments at 5-8; Crown Castle Comments at 31-32; CTIA Comments at 15-16; WIA Comments at 7.

[163] WIA Petition for Rulemaking at 7; ATC Comments at 7-8; AT&T Comments at 29; Crown Castle Comments at 31; CTIA Comments at 15-16; WIA Comments at 6-7; WISPA Comments at 8.

[164] WIA Petition for Decl. Ruling at 10.

replacement for any existing communications tower" that, *inter alia*, "does not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site."[165]

54. Local governments argue that the definition of "site" should not be interpreted to mean the applicant's leased or owned property on the date it submits its eligible facilities request.[166] They assert that this interpretation would permit providers to expand the boundaries of a site without review and approval by a local government by entering into leases that increase the area of a site after the locality's initial review.[167] NLC argues that it would lead to "extensive bypassing of local review for property uses not previously reviewed and approved to support wireless equipment."[168] Localities also generally oppose the compound expansion proposal because they argue that excavation of up to 30 feet beyond a tower's current site cannot be considered insubstantial.[169] Moreover, several cities argue that the Commission considered and rejected this proposal in the *2014 Infrastructure Order* and that circumstances have not changed that would warrant a policy reversal.[170]

55. In light of the different approaches recommended by the industry and localities, we seek comment on whether we should revise our rules to resolve these issues and, if so, in what manner. In particular, we propose to revise the definition of "site" in section 1.6100(b)(6) to make clear that "site" refers to the boundary of the leased or owned property surrounding the tower and any access or utility easements currently related to the site as of the date that the facility was last reviewed and approved by a locality. We further propose to amend section 1.6100(b)(7)(iv) so that modification of an existing facility that entails ground excavation or deployment of up to 30 feet in any direction outside the facility's site will be eligible for streamlined processing under section 6409(a).

56. Alternatively, we seek comment on whether we should revise the definition of site in section 1.6100(b)(6), as proposed above, without making the proposed change to section 1.6100(b)(7)(iv) for excavation or deployment of up to 30 feet outside the site. As another option, we seek comment on whether to define site in section 1.6100(b)(6) as the boundary of the leased or owned property surrounding the tower and any access or utility easements related to the site *as of the date an applicant submits a modification request*. Commenters should describe the costs and benefits of these approaches, as well as any other alternatives that they discuss in comments, and provide quantitative estimates as appropriate.

V. PROCEDURAL MATTERS

57. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.

[165] Wireless Facilities Nationwide Programmatic Agreement at § III.B.

[166] NLC Comments at 10-12; NATOA Comments at 11-12.

[167] NLC Comments at 10-12; NATOA Comments at 11-12.

[168] NLC Comments at 10-12; *see also* NATOA Comments at 11.

[169] San Diego Comments at 53; NLC Comments at 4-5, 10-12; NATOA Comments at 14-15.

[170] San Diego Comments at 49-53.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

58. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

59. *Ex Parte Rules—Permit-But-Disclose.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[171] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

60. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[172] the Commission has prepared an Initial Regulatory Flexibility Analysis

[171] 47 CFR § 1.1200 *et seq.*

[172] *See* 5 U.S.C. § 603.

(IRFA) of the possible significant economic impact on small entities of the policies and actions addressed in the *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *Notice of Proposed Rulemaking*, and should have a separate and distinct heading designating them as responses to the IRFA.

61. *Paperwork Reduction Act*. This *Declaratory Ruling and Notice of Proposed Rulemaking* does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

62. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Declaratory Ruling and Notice of Proposed Rulemaking* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

VI. ORDERING CLAUSES

63. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i)-(j), 7, 201, 253, 301, 303, 309, 319, and 332 of the Communications Act of 1934, as amended, and section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 157, 201, 253, 301, 303, 309, 319, 332, 1455 that this *Declaratory Ruling* in WT Docket No. 19-250 and *Notice of Proposed Rulemaking* in RM-11849 IS hereby ADOPTED.

64. IT IS FURTHER ORDERED that this *Declaratory Ruling* SHALL BE effective upon release. It is our intention in adopting the foregoing *Declaratory Ruling* that, if any provision of the *Declaratory Ruling*, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of such *Declaratory Ruling* not deemed unlawful, and the application of such *Declaratory Ruling* to other person or circumstances, shall remain in effect to the fullest extent permitted by law.

65. IT IS FURTHER ORDERED that, pursuant to 47 CFR § 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of this *Declaratory Ruling* will commence on the date that this *Declaratory Ruling* is released.

66. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Declaratory Ruling and Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

67. IT IS FURTHER ORDERED that this *Declaratory Ruling and Notice of Proposed Rulemaking* SHALL BE sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Comments and Reply Comments

Comments

ACT—The App Association
Alamo Improvement Association
Ameren Service Company; American Electric Power Service Corporation; Duke Energy Corporation; Entergy Corporation; Oncor Electric Delivery Company LLC; Southern Company; Tampa Electric Company
American Tower Corporation
AT&T
Chevy Chase Village
City of Brea, California
City of Chino Hills
City of Coconut Creek
City of College Park
City of Costa Mesa
City of Frederick
City of Fort Bragg, California
City of Gaithersburg
City of Huntington Beach
City of Newport News, Virginia
City of New York
City of Ojai
City of San Diego, Cal.; City of Beaverton, Or.; City of Boulder, Colo.; Town of Breckenridge, Colo.; City of Carlsbad, Cal.; City Of Cerritos, Cal.; Colorado Communications And Utility Alliance; City Of Coronado, Cal.; Town Of Danville, Cal.; City of Encinitas, Cal.; City of Glendora, Cal.; King County, Wash.; City of Lacey, Wash.; City of La Mesa, Cal.; City of Lawndale, Cal.; League of Oregon Cities; League of California Cities; City of Napa, Cal.; City of Olympia, Wash.; City of Oxnard, Cal.; City of Pleasanton, Cal.; City of Rancho Palos Verdes, Cal.; City of Richmond, Cal.; Town of San Anselmo, Cal.; City of San Marcos, Cal.; City of San Ramon, Cal.; City of Santa Cruz, Cal.; City of Santa Monica, Cal.; City of Solana Beach, Cal.; City of South Lake Tahoe, Cal.; City of Tacoma, Wash.; City of Thousand Oaks, Cal.; Thurston County, Wash.; City of Tumwater, Wash. (San Diego)
City of Seattle
Communications Workers of America
Competitive Carriers Association
Consumer Technology Association
Crown Castle International Corp.
CTIA
East Bay Neighborhoods for Responsible Technology
ExteNet Systems, Inc.
Free State Foundation
Gwen Kennedy (on behalf of Loudon County, Virginia)
Margaret Phillips
Maryland Municipal League
Comments of The National Association of Telecommunications Officers and Advisors; The United States Conference of Mayors; and The National Association of Counties (NATOA)
National League of Cities; Clark County, Nevada; Cobb County, Georgia; Howard County, Maryland; Montgomery County, Maryland; The City of Ann Arbor, Michigan; The City of Arlington, Texas; The City of Bellevue, Washington; The City of Boston, Massachusetts; The City of Burlingame, California; The Town of Fairfax, California; The City of Gaithersburg, Maryland; The City of Greenbelt, Maryland; The Town of Hillsborough, California; The City of Kirkland,

Washington; The City of Lincoln, Nebraska; The City of Los Angeles, California; The City of Monterey, California; The City of Myrtle Beach, South Carolina; The City of New York, New York; The City of Omaha, Nebraska; The City of Portland, Oregon; The City of San Bruno, California; The Michigan Coalition to Protect Public Rights-Of-Way; The Texas Municipal League; and The Texas Coalition of Cities for Utility Issues (NLC)

Nokia

States of California and Nevada Chapter of the National Association of Telecommunications Officers and Advisors (SCAN NATOA, Inc.)

T-Mobile USA, Inc.

Town of Chesapeake Beach

Town of Kensington, Maryland

Verizon

WIA–The Wireless Infrastructure Association

Wireless Internet Service Providers Association

Reply Comments

American Tower Corporation

AT&T

City and County of San Francisco

City of San Diego, CA; City of Beaverton, Or.; City of Boulder, Colo.; Town of Breckenridge, Colo.; City of Carlsbad, Cal.; City of Cerritos, Cal.; Colorado Communications And Utility Alliance; City of Coronado, Cal.; Town of Danville, Cal.; City of Encinitas, Cal.; City of Glendora, Cal.; King County, Wash.; City of Lacey, Wash.; City of La Mesa, Cal.; City of Lawndale, Cal.; League of Oregon Cities; League of California Cities; City of Napa, Cal.; City of Olympia, Wash.; City of Oxnard, Cal.; City of Pleasanton, Cal.; City of Rancho Palos Verdes, Cal.; City of Richmond, Cal.; Town of San Anselmo, Cal.; City of San Marcos, Cal.; City of San Ramon, Cal.; City of Santa Cruz, Cal.; City of Santa Monica, Cal.; City of Solana Beach Cal.; City of South Lake Tahoe, Cal.; City of Tacoma, Wash.; City of Thousand Oaks, Cal.; Thurston County, Wash.; City of Tumwater, Wash. (San Diego)

Competitive Carriers Association

Consumer Technology Association

Crown Castle International Corp.

CTIA

ExteNet Systems, Inc.

National Association of Telecommunications Officers and Advisors; United States Conference of Mayors; National Association of Counties (NATOA *et. al.*)

National League of Cities; Clark County, NV; Cobb County, GA; Howard County, MD; Montgomery County, MD; City of Ann Arbor, MI; City of Arlington, TX; City of Baltimore, MD; City of Bellevue, WA; City of Boston, MA; City of Burien, WA; City of Burlingame, CA; City of Culver City, CA; Town of Fairfax, CA; City of Gaithersburg, MD; City of Greenbelt, MD; Town of Hillsborough, CA; City of Kirkland, WA; City of Lincoln, NE; City of Los Angeles, CA; City of Monterey, CA; City of Myrtle Beach, SC; City of New York, NY; City of Omaha, NE; City of Ontario, CA; City of Piedmont, CA; City of Portland, OR; City of San Bruno, CA; Michigan Coalition To Protect Public Rights-of-Way; Texas Municipal League; The Texas Coalition of Cities For Utility Issues (NLC *et. al.*)

Nina Beety

R Street Institute

The City of Frederick

T-Mobile USA, Inc.

Wireless Infrastructure Association (WIA)

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in this Notice of Proposed Rulemaking (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Notice* and IRFA (or summaries thereof) will be published in the *Federal Register*.[3]

A. Need for, and Objectives of, the Proposed Rules

2. The *Notice* proposes to revise the definition of "site" in section 1.6100(b)(6) to make clear that "site" refers to the boundary of the leased or owned property surrounding the tower and any access or utility easements related to the site as of the date the facility was last reviewed and approved by a locality. It also proposes to amend section 1.6100(b)(7)(iv) to allow for streamlined procedures under the section 6409 of the Commission's rules to cover modifications to an existing facility that entail ground excavation or deployment of up to 30 feet in any direction outside the boundary of the site.

3. The *Notice* seeks comment on whether the Commission should revise the definition of "site" in section 1.6100(b)(6) without making the proposed change for excavation or deployment of up to 30 feet outside the boundary of the site. The Notice also seeks comment on an alternative definition—whether to define "site" in section 1.6100(b)(6) as the boundary of the leased or owned property surrounding the tower and any access or utility easements related to the site *as of the date an applicant submits a modification request*. Finally, the *Notice* asks commenters to describe the costs and benefits of each approach, as well as any other alternatives, and quantitative estimates as appropriate.

4. Section 1.6100(b)(7)(iv) of the Commission's rules provides that "a modification substantially changes the physical dimensions of an eligible support structure if . . . [i]t entails any excavation or deployment outside the current site[.]"[4] Accordingly, a proposed modification that entails any excavation outside the current site of a tower or base station is not eligible for streamlined approval by State or local governments under section 6409(a). Section 1.6100(b)(6) defines "site" for towers outside of the public rights-of-way as "the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground."[5]

5. Industry commenters argue that current "site" means the property leased or owned by the applicant at the time it submits an application to make a qualifying modification under section 6409(a).[6] Industry commenters state that their proposed clarification merely affirms the plain meaning of the rule.[7]

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[1] *See* 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id.*

[4] 47 CFR § 1.6100(b)(7)(iv).

[5] 47 CFR § 1.6100(b)(6).

[6] *See e.g.,* WIA Petition for Decl. Ruling at 18; CTIA Comments at 11; AT&T Comments at 9; Crown Castle Comments at 18.

[7] AT&T Comments at 19; Crown Castle at 18; CTIA Comments at 11; WIA Comments at 11.

They state that such clarification is needed, because many local governments interpret section 1.6100(b)(6) as referring to the original site and wrongly claim that a modification is not entitled to section 6409(a) if it entails any deployment outside of those original boundaries.[8] Local governments oppose WIA's interpretation, saying it would permit providers to expand the boundaries of a site without review and approval by a local government by entering into leases that increase the area of a site after the locality's initial review.[9]

6. Section 1.6100(b)(7)(iv) provides that "a modification substantially changes the physical dimensions of an eligible support structure if . . . [i]t entails any excavation or deployment outside the current site[.]"[10] However "site" is defined, a proposed modification is not eligible for streamlined processing under section 6409(a) if it is on a tower outside a right-of-way and involves excavation outside the site.[11] WIA and other industry commenters urge the Commission to amend this rule so that "excavation or facility deployments at locations up to 30 feet in any direction outside the current boundaries of a macro tower compound" would not constitute a substantial change in the physical dimensions.[12]

7. Industry commenters contend that it is often difficult to collocate transmission equipment on existing macro towers without expanding the compounds surrounding those towers in order to deploy additional equipment sheds or cabinets on the ground.[13] They argue that such deployments are becoming increasingly necessary to house multiple carriers' facilities on towers built in the past to support the needs of a single carrier and to facilitate the extensive network densification needed for rapid 5G deployment.[14] In contrast, local governments generally oppose the compound expansion proposal arguing that excavation of up to a 30-feet beyond a tower's current site cannot be considered insubstantial.[15] Moreover, several cities argue that the Commission considered and rejected this proposal in the *2014 Infrastructure Order* and that circumstances have not changed that would warrant a policy reversal.[16]

B. Legal Basis

8. The proposed action is authorized pursuant to sections 1, 4(i)-(j), 7, 201, 253, 301, 303, 309, 319, and 332 of the Communications Act of 1934, as amended, and section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 157, 201, 253, 301, 303, 309, 319, 332, 1455.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

9. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[17] The

[8] *See* AT&T Comments at 19; American Tower Comments at 19; Crown Castle Comments at 28.

[9] NLC Comments at 10-12; NATOA Comments at 11-12.

[10] 47 CFR § 1.6100(b)(7)(iv).

[11] *See* 47 CFR § 1.6100(b)(6)

[12] WIA Petition for Rulemaking at 9-11.

[13] American Tower Comments at 5-8; Crown Castle Comments at 31-32; CTIA Comments at 15-16; WIA Comments at 7.

[14] WIA Petition for Rulemaking at 7; American Tower Comments at 7-8; AT&T Comments at 29; Crown Castle Comments at 31; CTIA Comments at 15-16; WIA Comments at 6-7; WISPA Comments at 8.

[15] San Diego Comments at 53-53; NLC Comments at 4-5, 12-14; NATOA Comments at 14-15.

[16] *See e.g.*, San Diego Comments at 49-53.

[17] 5 U.S.C. § 603(b)(3).

RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[18] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[19] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[20]

10. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.[21] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[22] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.[23]

11. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[24] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[25] Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[26]

12. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special

[18] 5 U.S.C. § 601(6).

[19] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[20] 15 U.S.C. § 632.

[21] *See* 5 U.S.C. § 601(3)-(6).

[22] *See* SBA, Office of Advocacy, "What's New With Small Business?", https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf (Sept 2019).

[23] *Id*.

[24] 5 U.S.C. § 601(4).

[25] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[26] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

districts, with a population of less than fifty thousand."[27] U.S. Census Bureau data from the 2017 Census of Governments[28] indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[29] Of this number there were 36,931 general purpose governments (county[30], municipal and town or township[31]) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts[32] with enrollment populations of less than 50,000.[33] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[34]

13. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[35] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[36] For this industry, U.S. Census Bureau data for 2012 show that there

[27] 5 U.S.C. § 601(5).

[28] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[29] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[30] *See* U.S. Census Bureau, 2017 Census of Governments - Organization, Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[31] *See* U.S. Census Bureau, 2017 Census of Governments - Organization, Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[32] *See* U.S. Census Bureau, 2017 Census of Governments - Organization, Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[33] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[34] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

[35] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search.

[36] *See* 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

were 967 firms that operated for the entire year.[37] Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed of 1000 employees or more.[38] Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

14. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by our actions.[39] The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.[40] Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.[41] Thus, using available data, we estimate that the majority of wireless firms can be considered small.

15. *All Other Telecommunications.* The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[42] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[43] Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[44] The SBA has developed a small business size standard for "All Other Telecommunications", which consists of all such firms with annual receipts of $35 million or less.[45] For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.[46] Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had

[37] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.

[38] *Id*. Available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[39] *See* http://wireless.fcc.gov/uls. For the purposes of this IRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

[40] *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[41] *See id*.

[42] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications*", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017.

[43] *Id.*

[44] *Id*.

[45] *See* 13 CFR § 121.201, NAICS Code 517919.

[46] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false.

annual receipts of $25 million to $49, 999,999.[47] Thus, the Commission estimates that the majority of "All Other Telecommunications" firms potentially affected by our action can be considered small.

16. *Fixed Microwave Services.* Microwave services include common carrier,[48] private-operational fixed,[49] and broadcast auxiliary radio services.[50] They also include the Upper Microwave Flexible Use Service[51], Millimeter Wave Service[52], Local Multipoint Distribution Service (LMDS),[53] the Digital Electronic Message Service (DEMS),[54] and the 24 GHz Service,[55] where licensees can choose between common carrier and non-common carrier status.[56] There are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services.[57] The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite)[58] and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.[59] For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[60] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[61] Thus under this SBA category and the associated size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

17. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708

[47] *Id.*

[48] *See* 47 CFR Part 101, Subparts C and I.

[49] *See* 47 CFR Part 101, Subparts C and H.

[50] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[51] *See* 47 CFR Part 30.

[52] *See* 47 CFR Part 101, Subpart Q.

[53] *See* 47 CFR Part 101, Subpart L.

[54] *See* 47 CFR Part 101, Subpart G.

[55] See id.

[56] *See* 47 CFR §§ 101.533, 101.1017.

[57] These statistics are based on a review of the Universal Licensing System on September 22, 2015.

[58] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search.

[59] *See* 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

[60] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series, Estab and Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517210, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.

[61] *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies discussed herein. We note, however, that the microwave fixed licensee category includes some large entities.

18. *FM Translator Stations and Low Power FM Stations*. FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICs Code as licensees of radio stations.[62] This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public.[63] Programming may originate in their own studio, from an affiliated network, or from external sources.[64] The SBA has established a small business size standard which consists of all radio stations whose annual receipts are $41.5 million dollars or less.[65] U.S. Census Bureau data for 2012 indicate that 2,849 radio station firms operated during that year.[66] Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more.[67] Therefore, based on the SBA's size standard we conclude that the majority of FM Translator Stations and Low Power FM Stations are small.

19. *Location and Monitoring Service (LMS).* LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $15 million.[68] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $3 million.[69] These definitions have been approved by the SBA.[70] An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

20. *Multichannel Video Distribution and Data Service (MVDDS).* MVDDS is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding

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[62] *See* U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017.

[63] *Id.*

[64] *Id.*

[65] *See* 13 C.F.R. 121.201, NAICS Code 515112.

[66] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series – Estab and Firm Size: Receipts Size of Firms for the U.S.:2012*, NAICS Code 515112, https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515112&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false.

[67] *Id.*

[68] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, PR Docket No. 93-61, *Second Report and Order*, 13 FCC Rcd 15182, 15192 para. 20 (1998); *see also* 47 CFR § 90.1103.

[69] *Id.*

[70] *See* Letter from Aida Alvarez, Administrator, Small Business Administration to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC (Feb. 22, 1999).

three years.[71] These definitions were approved by the SBA.[72] On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[73] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[74]

21. *Multiple Address Systems.* Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, Profit-based Spectrum use, the size standards established by the Commission define "small entity" for MAS licensees as an entity that has average annual gross revenues of less than $15 million over the three previous calendar years.[75] A "Very small business" is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than $3 million over the preceding three calendar years.[76] The SBA has approved these definitions.[77] The majority of MAS operators are licensed in bands where the Commission has implemented a geographic area licensing approach that requires the use of competitive bidding procedures to resolve mutually exclusive applications.

22. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 Economic Area market area MAS authorizations. The Commission's licensing database also indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service. In 2001, an auction for 5,104 MAS licenses in 176 EAs was conducted.[78] Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

23. With respect to the second category, Internal Private Spectrum use consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS

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[71] Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614, 9711, para. 252 (2002).

[72] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Feb. 13, 2002).

[73] *See* "*Multichannel Video Distribution and Data Service Spectrum Auction Closes; Winning Bidders Announced*," Public Notice, 19 FCC Rcd 1834 (2004).

[74] *See* "*Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63*," Public Notice, 20 FCC Rcd 19807 (2005).

[75] *See* Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, 15 FCC Rcd 11956, 12008, para. 123 (2000).

[76] *Id*.

[77] *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (June 4, 1999).

[78] *See* "Multiple Address Systems Spectrum Auction Closes," Public Notice, 16 FCC Rcd 21011 (2001).

serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The closest applicable definition of a small entity is the "Wireless Telecommunications Carriers (except Satellite)" definition under the SBA size standards.[79] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[80] For this category, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[81] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[82] Thus under this category and the associated small business size standard, the Commission estimates that the majority of firms that may be affected by our action can be considered small.

24. *Non-Licensee Owners of Towers and Other Infrastructure*. Although at one time most communications towers were owned by the licensee using the tower to provide communications service, many towers are now owned by third-party businesses that do not provide communications services themselves but lease space on their towers to other companies that provide communications services. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200 feet in height or within the glide slope of an airport must register the tower with the Commission's Antenna Structure Registration ("ASR") system and comply with applicable rules regarding review for impact on the environment and historic properties.

25. As of March 1, 2017, the ASR database includes approximately 122,157 registration records reflecting a "Constructed" status and 13,987 registration records reflecting a "Granted, Not Constructed" status. These figures include both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers.[83] Regarding towers that do not require ASR registration, we do not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners that would be subject to the rules on which we seek comment. Moreover, the SBA has not developed a size standard for small businesses in the category "Tower Owners." Therefore, we are unable to determine the number of non-licensee tower owners that are small entities. We believe, however, that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands. In addition, there may be other non-licensee owners of other wireless infrastructure, including Distributed Antenna Systems (DAS) and small cells that might be affected by the measures on which we seek comment. We do not have any basis for estimating the number of such non-licensee owners that are small entities.

26. The closest applicable SBA category is All Other Telecommunications[84], and the appropriate size standard consists of all such firms with gross annual receipts of $38 million or less.[85] For

[79] *See* 13 CFR § 121.201, NAICS Code 517312 (formerly 517210).

[80] *Id*.

[81] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517210, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.

[82] Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[83] We note, however, that approximately 13,000 towers are registered to 10 cellular carriers with 1,000 or more employees.

[84] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications*", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017.

this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.[86] Of these firms, a total of 1,400 had gross annual receipts of less than $25 million and 15 firms had annual receipts of $25 million to $49, 999,999.[87] Thus, under this SBA size standard a majority of the firms potentially affected by our action can be considered small.

27. *Personal Radio Services.* Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided for in other services. Personal radio services include services operating in spectrum licensed under Part 95 of our rules.[88] These services include Citizen Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service.[89] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. All such entities in this category are wireless, therefore we apply the definition of Wireless Telecommunications Carriers (except Satellite)[90], pursuant to which the SBA's small entity size standard is defined as those entities employing 1,500 or fewer persons.[91] For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[92] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[93] Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. We note however, that many of the licensees in this category are individuals and not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities that may be affected by our actions in this proceeding.

28. *Private Land Mobile Radio Licensees*. Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically

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[85] *See* 13 CFR § 121.201, NAICS Code 517919.

[86] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false.

[87] *Id*.

[88] 47 CFR Part 90.

[89] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by subpart D, subpart A, subpart C, subpart B, subpart H, subpart I, subpart G, and subpart J, respectively, of Part 95 of the Commission's rules. See generally 47 CFR Part 95.

[90] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search.

[91] *See* 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

[92] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517210, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.

[93] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged *in radiotelephone communications.*[94] The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.[95] For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[96] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[97] Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR Licensees are small entities.

29. According to the Commission's records, a total of approximately 400,622 licenses comprise PLMR users.[98] Of this number there are a total of approximately 3,174 PLMR licenses in the 4.9 GHz band;[99] 29,187 PLMR licenses in the 800 MHz band;[100] and 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz.[101] The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

30. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[102] Because of the vast array of public safety licensees, the Commission has not

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[94] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search.

[95] *See* 13 CFR § 121.201, NAICS Code 517312 (formerly 517210).

[96] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517210, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.

[97] *Id*. Available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[98] This figure was derived from Commission licensing records as of September 19, 2016. Licensing numbers change on a daily basis. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of PLMR licensees that have fewer than 1,500 employees.

[99] Based on an FCC Universal Licensing System search of January 26, 2018. Search parameters: Radio Service = PA – Public Safety 4940-4990 MHz Band; Authorization Type = Regular; Status = Active.

[100] Based on an FCC Universal Licensing System search of May 15, 2017. Search parameters: Radio Service = GB, GE, GF, GJ, GM, GO, GP, YB, YE, YF, YJ, YM, YO, YP, YX; Authorization Type = Regular; Status = Active.

[101] This figure was derived from Commission licensing records as of August 16, 2013. Licensing numbers change daily. We do not expect this number to be significantly smaller today. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of licensees that have fewer than 1,500 employees.

[102] *See* subparts A and B of Part 90 of the Commission's Rules, 47 C.F.R. §§ 90.1-90.22. Police licensees serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees are comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include state, county, or municipal entities that use radio for official purposes. State departments of conservation and private forest organizations comprise forestry service licensees that set up communications networks among fire lookout towers and ground crews. State and local governments are highway maintenance licensees that provide emergency and routine communications to aid other

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developed a small business size standard specifically applicable to public safety licensees. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications.[103] The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.[104] For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.[105] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[106] Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, we include under public safety services the number of government entities affected. According to Commission records, there are a total of approximately 133,870 licenses within these services.[107] There are 3.121 licenses in the 4.9 GHz band, based on an FCC Universal Licensing System search of March 29, 2017.[108] We estimate that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

31. *Radio Stations*. This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources."[109] The SBA has established a small business size standard for this category as firms having $41.5 million or less in annual receipts.[110] U.S. Census Bureau data for 2012 show that 2,849 radio station firms operated during that year.[111] Of that

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public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Additional licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

[103] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search.

[104] *See* 13 CFR § 121.201, NAICS Code 517312 (formerly 517210).

[105] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012,* NAICS Code 517210, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.

[106] *Id*. Available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[107] This figure was derived from Commission licensing records as of June 27, 2008. Licensing numbers change on a daily basis. We do not expect this number to be significantly smaller today. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of public safety licensees that have less than 1,500 employees.

[108] Based on an FCC Universal Licensing System search of March 29, 2017. Search parameters: Radio Service = PA – Public Safety 4940-4990 MHz Band; Authorization Type = Regular; Status = Active.

[109] *See* U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations*," https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017.

[110] *See* 13 CFR § 121.201, NAICS Code 515112.

[111] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series – Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012,* NAICS Code 515112, https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515112&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false.

number, 2,806 firms operated with annual receipts of less than $25 million per year and 17 with annual receipts between $25 million and $49,999,999 million.[112] Therefore, based on the SBA's size standard the majority of such entities are small entities.

32. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database as of January 2018, about 11,261 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition.[113] The Commission has estimated the number of licensed commercial AM radio stations to be 4,580 stations and the number of commercial FM radio stations to be 6,726, for a total number of 11,306.[114] We note the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,172.[115] Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

33. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.[116] The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a "small business," an entity may not be dominant in its field of operation.[117] We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

34. *Satellite Telecommunications.* This category comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[118] Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $35 million or less in average annual receipts, under SBA rules.[119] For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.[120] Of this total, 299 firms had annual

[112] *Id.*

[113] BIA/Kelsey, MEDIA Access Pro Database (viewed Jan. 26, 2018).

[114] Broadcast Station Totals as of March 31, 2020, Press Release (MB April 6, 2020) (March 31, 2020 Broadcast Station Totals), https://docs.fcc.gov/public/attachments/DOC-363515A1.pdf.

[115] *Id.*

[116] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both." 13 C.F.R. § 121.103(a)(1).

[117] 13 C.F.R. § 121.102(b).

[118] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications",* https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017.

[119] *See* 13 CFR § 121.201, NAICS Code 517410.

[120] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517410, https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517410&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false&vintage=2012.

receipts of less than $25 million.[121] Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

35. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."[122] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[123] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $41.5 million or less in annual receipts.[124] The 2012 Economic Census reports that 751 firms in this category operated in that year.[125] Of that number, 656 had annual receipts of $25,000,000 or less, and 25 had annual receipts between $25,000,000 and $49,999,999.[126] Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

36. The Commission has estimated the number of licensed commercial television stations to be 1,377.[127] Of this total, 1,258 stations (or about 91 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 384.[128] Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,300 low power television stations, including Class A stations (LPTV) and 3,681 TV translator stations.[129] Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

37. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations[130] must be included. Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition,

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[121] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard of annual receipts of $35 million or less.

[122] *See* U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515120&search=2017+NAICS+Search&search=2017.

[123] *Id.*

[124] *See* 13 CFR § 121.201, NAICS Code 515120.

[125] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series – Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012,* NAICS Code 515120, https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515120&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false.

[126] *Id.*

[127] *Broadcast Station Totals* as of June 30, 2018, Press Release (MB, rel. Jul. 3, 2018) (June 30, 2018 Broadcast Station Totals Press Release), https://docs.fcc.gov/public/attachments/DOC-352168A1.pdf.

[128] *Id.*

[129] *Id.*

[130] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 C.F.R. § 21.103(a)(1).

another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

38. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).[131]

39. *BRS* - In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[132] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard).[133] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

40. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.[134] The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.[135] Auction 86 concluded in 2009 with the sale of 61 licenses.[136] Of the ten winning bidders, two bidders that claimed small business status won

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[131] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[132] 47 CFR § 21.961(b)(1).

[133] 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1500 or fewer employees.

[134] *Auction of Broadband Radio Service (BRS) Licenses*, *Scheduled for October 27*, *2009*, *Notice and Filing Requirements*, *Minimum Opening Bids*, *Upfront Payments*, *and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

[135] *Id*. at 8296 para. 73.

[136] *Auction of Broadband Radio Service Licenses Closes*, *Winning Bidders Announced for Auction 86*, *Down Payments Due November 23*, *2009*, *Final Payments Due December 8*, *2009*, *Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

41. *EBS* - Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[137] The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees.[138] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.[139] Of this total, 3,083 operated with fewer than 1,000 employees.[140] Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to U.S. Census Bureau data, the Commission's Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.[141]

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

42. The excavation or deployment boundaries of an eligible facilities request poses significant policy implications associated with the Commission's section 6409(a) rules. We anticipate that any rule changes that result from the *Notice* will provide certainty for providers, state and local governments, and other entities interpreting the section 6409(a) rules. In the *Notice*, we seek comment on changes to our rules regarding the definition of a "site" surrounding a tower, as well as streamlined treatment pursuant to the section 6409 rules for an excavation or deployments outside the boundaries of an existing tower site,.[142] The Commission does not believe that our resolution of these matters will create any new reporting, recordkeeping, or other compliance requirements for small entities or others that will be impacted by our decision.

43. Specifically, we propose to amend the definition of the term "site" in section 1.6100(b)(6) to make clear that "site" refers to the current boundary of the leased or owned property surrounding the tower and any access or utility easements currently related to the site on the date the facility was last reviewed and approved by a locality. In addition, we propose to change the Commission's rules to allow streamlined treatment under the section 6409 rules for "compound expansions" (i.e. excavation or facility deployments outside the current boundaries of a macro tower compound) of up to 30 feet in any direction outside the boundary of a site. This change to the existing rule, which was requested by industry commenters, is opposed by state and local government jurisdictions, and was previously considered but not adopted by the Commission in the *2014*

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[137] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"* (partial definition), http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[138] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[139] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

[140] *Id.*

[141] The term "small entity" within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

[142] 47 CFR § 1.6100(b)(6), (7)(iv).

Infrastructure Order. The *Notice* also seeks comment on whether to revise the definition of "site" without making the proposed change to allow for excavation or deployment of up to 30 feet outside the site. It seeks further comment on whether to define site in section 1.6100(b)(6) as the boundary of the leased or owned property surrounding the tower and any access or utility easements related to the site *as of the date an applicant submits a modification request*.

44. We do not anticipate rule changes resulting from the *Notice* to cause any new recordkeeping, reporting, or compliance requirements for entities preparing eligible facilities requests under section 6409(a) because entities are required to submit construction proposals outlining the work to be done regardless of whether the project qualifies as an eligible facilities request under section 6409(a). Additionally, while we do not anticipate that any action we take on the matters raised in the *Notice* will require small entities to hire attorneys, engineers, consultants, or other professionals to comply, the Commission cannot quantify the cost of compliance with the potential changes discussed in the *Notice*. As part of our invitation for comment however, we request that parties discuss any tangible benefits and any adverse effects as well as alternative approaches and any other steps the Commission should consider taking on these matters. We expect the information we receive in comments to help the Commission identify and evaluate relevant matters for small entities, including compliance costs and other burdens that may result from the matters raised in the *Notice*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

45. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.[143]

46. The Commission believes that clarifying the parameters of excavation or deployment within or around a "site" under section 1.6100 will provide more certainty to relevant parties and enable small entities and others to navigate more effectively state and local application processes. As a result, we anticipate that any clarifying rule changes on which the *Notice* seeks comment may help reduce the economic impact on small entities that may need to deploy wireless infrastructure by reducing the cost and delay associated with the deployment of such infrastructure.

47. To assist the Commission in its evaluation of the economic impact on small entities, and of such a rule change generally, and to better explore options and alternatives, the *Notice* asks commenters to discuss any benefits or drawbacks to small entities associated with making such a rule change. Specifically, we inquire whether there are any specific, tangible benefits or harms from changing the definition of "site" or applying section 6409(a)'s streamlined process to compound expansions, which may include an unequal burden on small entities.

48. The Commission is mindful that there are potential impacts from our decisions for small entity industry participants as well as for small local government jurisdictions. We are hopeful that the comments we receive illuminate the effect and impact of the proposed regulations in the *Notice* on small entities and small local government jurisdictions, the extent to which the regulations would relieve any burdens on small entities, including small local government jurisdictions, and whether there are any alternatives the Commission could implement that would achieve the Commission's goals while at the same time minimizing or further reducing the economic impact on small entities, including small local government jurisdictions.

[143] *See* 5 U.S.C. § 603(c)(1)-(4).

49. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the *Notice*. The Commission's evaluation of the comments filed in this proceeding will shape the final alternatives we consider, the final conclusions we reach, and any final actions we ultimately take in this proceeding to minimize any significant economic impact that may occur on small entities, including small local government jurisdictions.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

50. None.

STATEMENT OF
CHAIRMAN AJIT PAI

Re: *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849

Promoting American leadership in 5G wireless technology has been one of my top priorities since becoming Chairman. To that end, the FCC has been executing my 5G FAST plan, which includes three key components: pushing more spectrum into the marketplace, making it easier to deploy wireless infrastructure, and modernizing outdated regulations to expedite the deployment of fiber for wireless backhaul.

With respect to spectrum, the Commission has left no stone unturned in its quest to make a mix of low-, mid-, and high-band spectrum available for 5G services. Over the past 18 months, the Commission has concluded three auctions for high-band spectrum, making nearly 5,000 megahertz of spectrum available for next-generation wireless services. Our most recent auction, Auction 103, offered licenses for 3,400 megahertz of spectrum—the largest offering in the Commission's history. Carriers are acting quickly to put this spectrum to use for 5G service. And the Commission continues to work on making additional low-band spectrum available. We are nearing the end of the post-incentive auction repack, which is making available 600 MHz band spectrum for 5G on a nationwide basis, and we have reformed rules for the 800 MHz and 900 MHz bands.

But perhaps the FCC's most intense work over the course of the last couple of years has involved making additional mid-band spectrum available for 5G. Specifically, we adopted rule changes last July to liberate the 2.5 GHz band and put more of this underused spectrum to work for mobile broadband (including adopting a priority filing window to make this spectrum available for service to rural Tribes). Thanks to Commissioner O'Rielly's efforts, we've improved rules for operations in the 3.5 GHz band and done the necessary coordination and technical work in the band. As a result, 150 megahertz of 3.5 GHz band spectrum is available today for the deployment of innovative services, and we'll begin an auction of 70 megahertz of Priority Access Licenses on July 23, 2020. We've adopted service rules to make available 280 megahertz of spectrum in the C-band for 5G and are on track to auction that spectrum on December 8 of this year. And just recently, we announced that satellite incumbents have agreed to expedite the relocation process, so this 280 megahertz of spectrum will be available for 5G on an accelerated basis. None of this was easy. There were plenty of technical, political, and other challenges along the way. Nevertheless, the FCC majority persisted. And we're getting major results.

Of course, in addition to pushing more spectrum into the marketplace, a key component of the Commission's 5G FAST strategy has been updating our wireless infrastructure policies to encourage private-sector investment in the physical building blocks of 5G networks. And today's Declaratory Ruling and Notice of Proposed Rulemaking does just that. Commissioner Carr has spearheaded the Commission's efforts to update our wireless infrastructure policies. And this item, which was developed under his leadership, will clear up some of the confusion that has surrounded our rules implementing section 6409(a) of the Spectrum Act of 2012. These regulations apply when wireless infrastructure companies want to upgrade the equipment on existing structures, such as replacing antennas on a macro tower or adding antennas to a building.

These clarifications will accelerate the build out of 5G infrastructure by avoiding misunderstandings and reducing the number of disputes between local governments and wireless infrastructure builders—disputes that lead to delays and lawsuits. With today's action, we continue to advance the same goal that underlay the Spectrum Act and inspired the Commission's section 6409(a) regulations in the first place—avoiding unnecessary ambiguities and roadblocks in order to advance wireless broadband service for all Americans.

Now, there are some who argue that we should have slowed down or stopped our work on today's Declaratory Ruling because of the COVID-19 pandemic. I could not disagree more. The COVID-19 pandemic isn't a reason to slow down our efforts to expand wireless connectivity. It's a reason to speed them up. The pandemic has highlighted the need for all Americans to have broadband connectivity as soon as possible. Telehealth, remote learning, telework, precision agriculture—all of these things require broadband. And it is an iron law that you can't have broadband without broadband infrastructure.

And the argument that local governments have not had a sufficient opportunity to weigh in on these issues has no merit. The petitions on which we are acting today were filed in August and September of 2019, well before the COVID-19 pandemic. And the entire period for public comment on those petitions took place last year—also well before the COVID-19 pandemic.

These calls for delay are nothing new. Earlier this year, for example, some insisted that we should do absolutely nothing to make C-band spectrum available unless and until Congress passed a law on the subject. How's that advice looking now? If we had followed that politically-motivated counsel, we would *still* be stuck at square one, half a year later, with no prospect of movement. Instead, we're on track for a major C-band spectrum auction this year. The same old tactic is now applied to wireless infrastructure. Wait until . . . whenever, we are told. But waiting to deploy more wireless infrastructure isn't going to deliver advanced wireless services to American consumers, and it isn't going to make the United States the global leader in 5G.

The bottom line is this: It's easy to *say* that you favor moving forward quickly on 5G, but what actually matters is to *do* it. So I appreciate Commissioners O'Rielly and Carr for not just saying, but doing what's necessary to usher in the next generation of wireless technology for the American people.[1]

Thank you to the team that worked hard on this item. From the Wireless Telecommunications Bureau, including Paul D'Ari, Garnet Hanly, Kari Hicks, William Holloway, Susannah Larson, Belinda Nixon, Dana Shaffer, Donald Stockdale, Cecilia Sulhoff, and Joel Taubenblatt, and also Jiaming Shang and David Sieradzki, both formerly of the Wireless Telecommunications Bureau; from the Office of General Counsel, Deborah Broderson, Mike Carlson, David Horowitz, Linda Oliver, Bill Richardson, and Anjali Singh; from the Office of Economics and Analytics, Catherine Matraves and Patrick Sun; from the Wireline Competition Bureau, Adam Copeland, Elizabeth Drogula, and Michael Ray; from the Enforcement Bureau, Daniela Arregui and Jason Koslofsky; and from the Office of Communications Business Opportunities, Chana Wilkerson.

[1] *Cf. Seinfeld*, "The Alternate Side," Season 3, Episode 11 (Dec. 4, 1991) ("See, you know how to take the reservation, you just don't know how to *hold* the reservation. And that's really the most important part of the reservation, the holding. Anybody can just take them."), *available at* https://www.youtube.com/watch?v=dSZYsyrP3Co.

STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849

Today, the Commission refocuses its infrastructure efforts on the foundation of wireless networks – the macro tower. The Commission has taken several steps to reduce the regulatory burdens on siting small cells, but similar updates for macros have been lagging. A business plan centered on small cells and millimeter waves may work in our largest cities, but traditional towers and mid bands will be needed throughout much of the United States, especially in rural areas, where small cells do not, generally-speaking, make the most sense, at least at the current time.

I started pushing for a review of the barriers facing macro tower siting around five years ago, as industry started to consider what a 5G suburban and rural network build would look like. While it is unfortunate that we didn't get to this sooner, I am grateful that Commissioner Carr has honored his word to me that we would address hurdles that some localities have placed in the way of large tower siting. With significant progress being made on mid-band frequencies, it is imperative that we facilitate the deployment of macro towers that will be used to deliver the myriad of offerings mid-band spectrum will enable. And, as I have said before, our actions are precipitated by the behavior of a few bad actors, and here we address some of the problems being experienced. I fully recognize that many, if not most, local and state governments see the great benefit that these networks will bring and are actively working to fulfill the needs and demands of their citizens.

While the Commission took steps in 2014, pursuant to Congress's direction under Section 6409 of the Spectrum Act of 2012, to set localities straight on unacceptable activity that when it came to collocating facilities, some entities are still slowing down progress or doing what they can to stop wireless innovation from reaching consumers. Today, we clarify how some of our rules implemented in response to section 6409 should be interpreted, such as when the shot clock begins, how to measure height increases for towers when adding additional antennas, what is an equipment cabinet, and the treatment of concealment elements, among others. I am pleased that, at my request, further details were provided about the documentation needed to start the shot clock and to evidence that concealment elements were envisioned when obtaining a locality's approval. Such guidance is necessary so that all parties understand expectations and to avoid disputes down the road. While I understand some have asked that we delay today's action due to some concerns, many of the clarifications are straightforward and should reduce the burdens on locality staff reviewing applications. And, these clarifications are needed to facilitate the expansion of 5G networks by wireless providers and help entities like FirstNet meet their public safety obligations.

Additionally, the notice portion of today's item seeks comment on a proposal to allow minimal compound expansions under section 6409 streamlined processing. I am pleased that my request was accepted to make this a proposal, as opposed to simply seeking comment. Over the years, tower companies have repeatedly come to me with the challenges they face when compound expansions are needed to accommodate additional equipment for collocation purposes. And, there is a good foundation for such a change, as the construction of replacement towers that do not expand a compound by more than 30 feet are excluded from historic preservation review under a nationwide programmatic agreement. I expect that an order on this proposal will be presented before the Commission as quickly as possible.

Moreover, localities should note that the Commission is taking these matters seriously and will continue to issue such orders if our intent is being contravened or our rules implemented incorrectly. We will be ready to follow up on any issue, including those that we did not cover here, such as the

inappropriate use of other local permitting processes to hold up infrastructure siting or charging excessive fees.

Finally, I thank everyone involved for bringing this item to a vote and the staff for their continued efforts to facilitate infrastructure deployment. Now that we have clarified some areas where there were "misunderstandings" over the rules for streamlined collocations, it is time to conclude the ultimate collocation problem – twilight towers. The Commission needs to resolve this quagmire so that these towers can hold additional antennas, which are needed to provide wireless services to the American people.

I will approve the item.

STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849

Two years is about how long it takes to build a new macro tower. The process typically includes zoning, construction, and electrical permits; city council presentations and public town halls; environmental and historical preservation reviews; negotiation about aesthetics and design—and that's all *after* a provider has studied demand, engineered the signal, and bought land.

It's a lengthy, involved, expensive process. And in some ways you can understand why. Building a couple hundred foot tall structure doesn't happen every day, and once it's built, a tower can provide service for decades.

Local governments, industry, and Congress have concluded that there's often a better way. Reusing macro towers through collocating multiple providers and updating equipment can provide the public the benefits it deserves—wide coverage and fast connections—while avoiding the cost and delays associated with building new towers from scratch. It's common sense that putting new equipment on old towers is less intrusive and requires less regulatory review than new tower construction.

I had the chance to see how straightforward a collocation can be last week. That's when I drove out to a farm in Maryland and joined a tower crew that was swapping out 2G antennas for 5G ones on a macro tower. Take a look.

https://twitter.com/BrendanCarrFCC/status/1268263380420354053

Aaron and Charlie are among the 25,000 tower techs building broadband across the country literally with their hands. While their jobs are far from easy, the project they completed in about an hour last week was among their easiest: taking off an old antenna and attaching a new one.

Congress encouraged collocations like these by making them simpler through Section 6409 of the Spectrum Act. That law says that local governments "may not deny, and shall approve" any tower modification "that does not substantially change [its] physical dimensions." In 2014, the Commission wrote rules to implement the law, in particular defining what constitutes "substantial change."

In the last six years, those rules have been used to upgrade thousands of towers. The upgrades enabled 4G LTE service, especially on macro towers in rural America. They're being used now to build America's world-leading 5G networks. And they're benefiting communities by reducing the potential for redundant towers, creating less costly and disruptive infrastructure.

There have been some bumps along the way, and those are partly due to our 2014 rules. In some instances, our definition of "substantial change" wasn't as clear as it could have been, and there have been some disagreements over how to interpret our 60-day shot clock for local government approval. Those disagreements—the lack of clarity in our rules—can themselves slow down Internet builds. We aim to resolve those ambiguities in this declaratory ruling and notice. I'll highlight a few of the key actions we take today.

- We explain that the 60-day shot clock we adopted in 2014 begins when a provider takes the first procedural step that the locality specifies and shows in writing that the project qualifies for expedited consideration. The myriad processes that have grown outside of our shot clock should be brought back within it. Sixty days means 60 days.

- We clarify that when we use the term "concealment element," we're referring to those elements that make a stealthed tower look like something else—a clock tower or a tree, for example. A change becomes substantial and so doesn't qualify for expedited approval if a reasonable person would think that the modified tower no longer looks like that clock tower or tree.

- And we note that localities can place a number of conditions on new construction of a tower that can't be circumvented through this expedited process. However, there has to be express evidence that a condition really was a condition of approval.

I am proud of the thorough and thoughtful process the Commission took to craft this item, and I especially thank the Wireless Telecommunications Bureau and its infrastructure team for their skill and diligence. The two petitions that prompted this order came to us more than nine months ago. We sought comment on the petitions, and at the request of local governments and utilities, we extended the comment period into November. The record that developed was robust. We heard from infrastructure builders, broadband providers, local governments, and everyday Americans alike.

Localities were especially active. We heard from 70 local governments and their associations, and they provided us nearly 700 pages of detailed comments. They made a substantial contribution to this order, and their positions carried the day on several issues we decide. For example, we require industry to make written submissions before they can claim that the shot clock starts, and we protect a broad swath of localities' conditions of tower approval.

In the end, by bringing greater clarity to our rules, our decision reduces disagreements between providers and governments. And it separates the wheat from the chaff—the more difficult approval decisions, such as whether and how to construct a new tower, from the easier ones, such as whether to allow an existing tower to be upgraded.

It's also important that we act now because providing more broadband for more Americans has never been so important. It's at the forefront of our minds during this COVID-19 pandemic as kids learn from home, parents provide for their families away from the office, patients access critical care outside of hospitals, and we all connect to each other at a distance. Making upgrades easier is at the heart of 6409 and this order—and it comes at a time when we need as much capacity as we can get. So I am glad that we move forward today with clarifications that will help tower crews connect even more communities.

Our decision here is also the latest step in a series that the FCC has taken since 2017 to modernize our approach to 5G. Back then, it cost too much and took too long to build Internet infrastructure in this country. So we updated the environmental and historic preservation rules that were slowing down small cell builds. We built on the commonsense reforms adopted by the states and reined in outlier conduct. And we streamlined the process for swapping out utility poles to add wireless equipment, among other reforms.

I thank Chairman Pai for tapping me to lead this infrastructure work. The Commission has unleashed private sector investment that already is delivering results for the American people. The very first commercial 5G service launched here, in the U.S., in 2018. By the end of that year, 14 communities had 5G service. Halfway through 2019, that figure expanded to more than 30. And one provider alone has now committed to building 5G to 99 percent of the U.S. population.

America's momentum for 5G is now unmistakable. You can see it not only in big cities like New York or San Francisco, but in places like Sioux Falls, South Dakota where 5G small cells are live and in rural communities like the one I visited last week in Maryland where macro towers are beaming 5G

through farms and forests. Our infrastructure work will continue until every community has a fair shot at next-generation connectivity.

We call our decision today the 5G Upgrade Order because it will accelerate wireless service upgrades for the benefit of so many Americans. It will be an upgrade for rural America, as families who never had a choice in wireless will get new service. It will be an upgrade for first responders, as dedicated networks and expanded capacity are built on existing towers. And it will be an upgrade for all of us, as our networks blow past previous technologies to world-leading 5G.

I'm grateful for the strong support this order has received from dozens of leaders in local governments and in Congress, infrastructure builders, farmers and ranchers, first responders, and technologists. And I especially want to thank the Commission staff without whom this 5G Upgrade Order would not exist:

From the Wireless Telecommunications Bureau: Paul D'Ari, Garnet Hanly, Kari Hicks, William Holloway, Susannah Larson, Belinda Nixon, Dana Shaffer, Donald Stockdale, Cecilia Sulhoff, and Joel Taubenblatt, and also Jiaming Shang and David Sieradzki, both formerly of the Wireless Telecommunications Bureau.

From the Office of General Counsel: Deborah Broderson, Michael Carlson, David Horowitz, Linda Oliver, Bill Richardson, and Anjali Singh.

From the Office of Economics and Analytics: Catherine Matraves and Patrick Sun.

From the Wireline Competition Bureau: Adam Copeland, Elizabeth Drogula, and Michael Ray.

From the Enforcement Bureau: Daniela Arregui and Jason Koslofsky.

And from the Office of Communications Business Opportunities: Chana Wilkerson.

Thank you for your contributions to this order. It has my support.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
DISSENTING

Re: *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849

Let's start with the numbers.

More than 113,000 people have died in the cruel pandemic that is affecting communities across the country. Nearly 43 million Americans have filed for unemployment benefits as the economy reels from this public health catastrophe. The unemployment rate is now at its highest levels since the Great Depression. Protests have erupted in all 50 states as we face a nationwide reckoning over racial injustice.

We can't say with certainty where this overwhelming series of events takes us next. I pray it is toward a more just future. I hope it is one where the truths we hold to be self-evident are apparent not only in word but in deed.

But we can say with certainty that state and local governments are on the front line in all of these crises. That means they are dealing with an epic combination of illness, joblessness, food insecurity, social distancing, and public safety challenges—at the same time.

Moreover, all of this work is being carried out with fewer resources than ever before. That's because social distancing has reduced consumer spending and wages, causing tax revenues to plummet. At the same time, the demand for funding basic social services has gone up. This has created an unprecedented strain on state and local budgets.

So understandably mayors and governors across the country are ringing the alarm. They are wrestling with historic crises and struggling to find a new way forward in a period of profound civil unrest. They want to be heard by Washington. But today's decision demonstrates that at the Federal Communications Commission we're not listening.

Let me explain why. Today's decision seeks to clarify how the agency interprets Section 6409 of the Middle Class Tax Relief and Job Creation Act. That sounds technocratic. But it goes to the heart of what role cities and towns get to play in decisions about the communications infrastructure in their backyard. That's important for communities across the country and for our national wireless ambitions.

Today the FCC adopts a declaratory ruling that requires every state and local government to immediately review and update their current ordinances, policies, and application systems involving wireless towers. They have to rework the way they process new requests, how they measure tower height, what they do with requests to add more equipment, and how they conceal structures to preserve the visual character of their communities. Addressing these things is not unreasonable. But these clarifications can be hard to put into practice and they were shared with state and local governments for the first time only three weeks ago—and my goodness, they've been busy.

So it's no wonder than that we have heard from the National League of Cities. We've heard from the United States Conference of Mayors. We've heard from the National Association of Counties. We've heard from the National Association of Telecommunications Officers and Advisors. We've heard from the National Association of Towns and Townships. Together they represent more than 19,000 cities, 3,069 counties, and 10,000 towns across the country.

You know what they want? It's not radical. They want a bit more time to weigh in on our decision, so they can be in a better place to implement it. They want this time because their resources are strained by a deadly virus, economic calamity, and civil unrest. As 24 members of the United States House of Representatives Committee on Energy and Commerce noted last week, "[i]f local governments are forced to respond to this Declaratory Ruling instead of focusing on their public health and safety responses, it very well may put Americans' health and safety at risk."

But the FCC has decided to ignore this modest request for time to review. I don't get it. Why can't we acknowledge what is happening around us?

The sad truth is that this is not the first time we've given short shrift to the pleas of local governments who are strained by these historic days. It was just a few weeks ago when city officials and local firefighters asked the FCC to give them more time to weigh in on the court remand of our misguided decision to roll back net neutrality. But we didn't grant their request.

However, when companies suggested they needed more time to clear the 3.5 GHz band because of the pandemic, we were quick to oblige. We pushed back the start of our next spectrum auction too, again citing business disruptions caused by the coronavirus. The FCC even granted an extension of time to a foreign company it is investigating as a national security threat to the United States.

Why can't we offer the same courtesy to state and local governments? The law demonstrates a clear congressional policy in favor of removing locally imposed and unreasonably discriminatory obstacles to modifying existing facilities in order to foster the rapid deployment of wireless infrastructure. I know. As congressional staff, I helped write it. But some of the decisions we make today seem to be less about speeding up routine approvals under this law and more about lowering the costs of non-routine approvals by retrofitting them into this process too.

If we want to see infrastructure expand broadly and equitably across this country it takes federal and state and local authorities working together to do so. History proves this is true. And in these historic times this agency should not be ramrodding this effort through without listening to cities and towns across the country. They called for a bit more time. But the Federal Communications Commission hung up. I dissent.

STATEMENT OF COMMISSIONER GEOFFREY STARKS
DISSENTING

Re: *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849

More than 106,000 people have died from COVID-19 so far and unemployment has hit its highest levels since the Great Depression. The school year is ending, and millions of children have missed months of in-classroom instruction. And in the last 2 weeks, the recent protests have brought millions of people into the streets of cities across the country to demonstrate for justice. This is a true moment in American history.

State and local governments form the front line for all of these issues. They run the public hospitals and emergency response units treating the sick, dispense benefits to the unemployed, operate the schools struggling to provide distance learning to our children, and oversee the police departments that are both the focus on the demonstrations and helping to keep us safe. Even in good times, they operate on tight budgets and limited resources.

For State and local governments across the country, tax revenues are declining due to the economic fallout of COVID-19, even as they must increase their expenditures to respond to the pandemic and the demonstrations. Replacing retiring employees is out of the question, and layoffs and furloughs are under consideration, even as these governments prepare their budgets for the next year.

That is the moment in time in which we place today's item. Let me be clear -- I support the deployment of infrastructure to improve service and connect more Americans. Low-income and minority families in particular rely on wireless service, and I hope that any benefits from today's item will result in improved service and more affordable offerings for all neighborhoods, not just those with the wealthiest Americans. Moreover, tower technician jobs offer a path to financial security for many Americans even in these uncertain times. Finally, streamlining the infrastructure approval process has had broad support. Congress intended to provide a quick path for approval of straightforward modifications when it adopted Section 6409, and a unanimous Commission adopted implementing rules back in 2014.

But this isn't the right way to achieve those goals. Instead of reducing burdens, today's Declaratory Ruling imposes new obligations on local governments at a time where they have the least amount of time and resources. Instead of providing clarity, it creates uncertainty. Because of these issues, I'm concerned that today's decision may actually slow the growth of advanced wireless service rather than accelerating it.

Those who support this decision claim that it's necessary because local governments have unreasonably blocked straightforward modifications to existing wireless sites, insisting on burdensome and unnecessary meetings and documentation. According to the petitions, these alleged practices have slowed or prevented upgrades that would provide advanced services and allow more Americans to realize the promise of 5G. Supporters claim that we must act now to encourage the growth of these services.

This is starkly different from what these parties are publicly and commercially saying elsewhere. Just recently, T-Mobile announced that it now offers 5G coverage in all 50 states. AT&T says it remains on track to offer nationwide 5G sometime this summer, and Verizon plans to offer 5G service in 60 cities by the end of 2020. DISH remains committed to building a standalone nationwide 5G network in the next few years, and the major tower companies have asserted that even COVID-19 hasn't slowed down their buildout efforts.

Moreover, despite today's challenges, local governments continue to take timely action on applications from these companies and their partners. Even industry has recognized the efforts of local governments to maintain operations while their offices must be closed, including allowing electronic filing via online portals and email, creating drop boxes for hard copies of documents, and waiving and modifying requirements regarding permits, filing fees and public meetings.

Given the unusual circumstances and the extraordinary efforts by local governments to continue the timely processing of applications, I'm deeply disappointed that we rejected the reasonable request for more time to review the draft order submitted on behalf of local governments across the country and supported by 24 Members of Congress. While it's true that the Petitions underlying this decision were filed last Fall, as today's decision repeatedly notes, we do not adopt the recommendations proposed in those filings. It was only with the release of the draft Declaratory Ruling just three weeks ago that commenters learned that the Commission was even considering certain issues, let alone specific outcomes. Indeed, even the Commissioners only saw the current version yesterday, which contains substantive differences from the original draft.

Even under the best of circumstances, three weeks would not be enough notice for such an important decision, which will affect communities around the nation. At a minimum, we should have deferred our consideration of this item to allow interested parties more time to analyze and comment on the draft decision. But I would have gone further and dealt with these issues through a rulemaking proceeding, with notice of our proposed approach and an opportunity for public comment.

I do agree that our rules could use clarification, but the item here consistently misses the mark. For example, we should clearly define when the Section 6409 shot clock starts. But while the Declaratory Ruling acknowledges the value of preliminary reviews and meetings, it nevertheless starts the shot clock before those events take place and provides no flexibility to adjust once an applicant submits its paperwork and requests that first meeting. Under today's decision, once an applicant has taken these actions, the local government must ensure that every other step in the process is completed before the shot clock expires. This approach not only places an unfair burden on the local governments but could lead to disputes between governments and applicants about the reasonableness of any requirement and whether it can be accomplished within the 60-day shot clock period. We should have done a rulemaking to discuss these issues and how to avoid such outcomes.

There are other issues. In many cases, local governments approved sites years ago, well before passage of the Spectrum Act. Particularly for smaller cities, it's unlikely that their decisions explain the intent behind a particular requirement affecting a site's appearance. Yet today's Declaratory Ruling states that, unless the regulator can provide express evidence in the record demonstrating that a requirement was intended to disguise the nature of the equipment as something other than a wireless facility, the local government must give streamlined treatment to any changes. Moreover, for changes in appearance that don't disguise the nature of the equipment but merely make it harder to notice, the Declaratory Ruling establishes a standard that effectively preempts any requirement that the applicant claims it cannot reasonably meet.

The confusion doesn't stop there. This decision explicitly states that the number of equipment cabinets that can be added to a site is measured for each eligible facilities request and rejects the interpretation that the relevant rule sets a cumulative limit. The local governments are justifiably confused about whether today's decision effectively eliminates any limitation on the number of equipment cabinets that may be added over time. Today's decision disagrees with the suggestion that there's no such limit but fails to explain exactly how a local government would derive it. A rulemaking could have clearly spelled out our expectations.

Taken as a whole, rather than clarifying our policies and expediting approvals, the posture of this Declaratory Ruling is likely to lead to time-consuming and costly disputes about intent and reasonableness between local governments and industry; and furthermore, it is likely to lead to protracted litigation. Moreover, because of the substantial burdens we place on local governments' review of modifications to existing sites, those governments may even give greater scrutiny to initial siting requests, leading to additional frustration and delays.

These problems would be serious in a proposed rulemaking, but the process followed here raises the stakes even higher. Because this is a Declaratory Ruling, it applies retroactively to decisions that may be decades old.[1] This decision will create uncertainty regarding existing sites across the country. Moreover, doing this via a Declaratory Ruling will place an undue burden on local governments that are unfamiliar with the Commission. A clerk in a small city may not realize that a proposed site modification will require her to review not only the Code of Federal Regulations but the language of this decision and our 2014 order.

I wish that we had addressed these issues in a rulemaking proceeding, like the one we initiate today regarding proposed excavations and the meaning of the term "current site." While I have serious reservations about the approach proposed in the NPRM, I agree that we should receive input from the public before we act further in this area, although I would have provided more time for that input. I hope that we reconsider that timetable, given all the other demands currently faced by local governments. I dissent.

[1] *See Connect America Fund Developing a Unified Intercarrier Compensation Regime,* Order on Remand and Declaratory Ruling, WC Docket No. 10-90 *et al*., FCC 19-131 at para. 26 (rel. Dec. 17, 2019) ("As a general matter, declaratory rulings are adjudicatory and are presumed to have retroactive effect.") (citations omitted).

Gary Abrahams

From: Hanna Veal <hveal@GARDENCITYIDAHO.ORG>
Sent: Wednesday, July 20, 2022 6:43 PM
To: Gary Abrahams
Cc: Gary Abrahams
Subject: Re: 8247 W. State Street- payment of intake fees - (824322 site)

Good afternoon,

Would you be able to take pictures of the detached sidewalk and street trees, and any perimeter landscaping on the site even if it's not immediately in your leased area? And if you could, include them in your CUP application?

Thank you,
Hanna Veal

Get Outlook for iOS

From: Gary Abrahams <Gary@gmanetworkservices.com>
Sent: Thursday, July 14, 2022 4:40:26 PM
To: Hanna Veal <hveal@GARDENCITYIDAHO.ORG>
Cc: Gary Abrahams <Gary@gmanetworkservices.com>
Subject: 8247 W. State Street- payment of intake fees - (824322 site)

Hi Hanna,

I hope you are doing well. We are working on wrapping up details for the CUP submittals. I wanted to update you as during our last conversation, we discussed adding an existing landscape plan to the project drawings. I was provided with the attached photos that there is no landscaping as the existing facility is in a parking lot.

I may have some additional questions in the next week as we finalize details.

Thanks,
Gary Abrahams
For Crown Castle
206-349-4279

FEDERAL REGISTER

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Part IV

Federal Communications Commission

47 CFR Parts 1 and 17

Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 17

[WT Docket Nos. 13–238, 13–32; WC Docket No. 11–59; FCC 14–153]

Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules to update and tailor the manner in which it evaluates the impact of proposed deployments of wireless infrastructure on the environment and historic properties. The Commission also adopts rules to clarify and implement statutory requirements applicable to State and local governments in their review of wireless infrastructure siting applications, and it adopts an exemption from its environmental public notification process for towers that are in place for only short periods of time. Taken together, these steps will reduce the cost and delays associated with facility siting and construction, and thereby facilitate the delivery of more wireless capacity in more locations to consumers throughout the United States.

DATES: Effective February 9, 2015, except for § 1.40001, which shall be effective April 8, 2015; however, §§ 1.40001(c)(3)(i), 1.40001(c)(3)(iii), 1.140001(c)(4), and 17.4(c)(1)(vii), which have new information collection requirements, will not be effective until approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing OMB approval and the relevant effective date.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, (202) 418–7369, email *Peter.Trachtenberg@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O), WT Docket Nos. 13–238, 13–32; WC Docket No. 11–59; FCC 14–153, adopted October 17, 2014 and released October 21, 2014. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com.* Copies of the R&O also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket 13–238. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

I. NEPA and NHPA Review of Small Wireless Facilities

1. The Commission first adopts measures to update its review processes under the National Environmental Policy Act of 1969 (NEPA) and section 106 of the National Historic Preservation Act of 1966 (NHPA or section 106), with a particular emphasis on accommodating new wireless technologies that use smaller antennas and compact radio equipment to provide mobile voice and broadband service. These technologies, including distributed antenna systems (DAS), small cells, and others, can be deployed on a variety of non-traditional structures such as utility poles, as well as on rooftops and inside buildings, to enhance capacity or fill in coverage gaps. Updating the Commission's environmental and historic preservation rules will enable these innovations to flourish, delivering more broadband service to more communities, while reducing the need for potentially intrusive new construction and safeguarding the values the rules are designed to protect.

2. The Commission's environmental and historic preservation rules have traditionally been directed toward the deployment of macrocells on towers and other tall structures. Since 1974, these rules have excluded collocations of antennas from most of the requirements under the Commission's NEPA review process, recognizing the benefits to the environment and historic properties from the use of existing support structures over the construction of new structures. These exclusions have limitations. The collocation exclusion under NEPA, which was first established in 1974, on its face encompasses only deployments on existing towers and buildings, as these were the only support structures widely used 40 years ago, and does not encompass collocations on existing utility poles, for example. The collocation exclusions in the Commission's process for historic preservation review under section 106 do not consider the scale of small wireless facility deployments.

3. Thus, while small wireless technologies are increasingly deployed to meet the growing demand for high mobile data speeds and ubiquitous coverage, the Commission's rules and processes under NEPA and section 106, even as modified over time, have not reflected those technical advances. Accordingly, the Commission concludes that it will serve the public interest to update its environmental and historic preservation rules in large measure to account for innovative small facilities, and the Commission takes substantial steps to advance the goal of widespread wireless deployment, including clarifying and amending its categorical exclusions. The Commission concludes that these categorical exclusions, as codified in Section 1.1306(c) and Note 1 of its rules, do not have the potential for individually or cumulatively significant environmental impacts. The Commission finds that these clarifications and amendments will serve both the industry and the conservation values its review process was intended to protect. These steps will eliminate many unnecessary review processes and the sometimes cumbersome compliance measures that accompany them, relieving the industry of review process requirements in cases where they are not needed. These steps will advance the goal of spurring efficient wireless broadband deployment while also ensuring that the Commission continues to protect environmental and historic preservation values.

A. NEPA Categorical Exclusions

1. Regulatory Background

4. Section 1.1306 (Note 1) clarifies that the requirement to file an Environmental Assessment (EA) under section 1.1307(a) generally does not apply to ''the mounting of antenna(s) on an existing building or antenna tower'' or to the installation of wire or cable in an existing underground or aerial corridor, even if an environmentally sensitive circumstance identified in section 1.1307(a) is present. Note 1 reflects a preference first articulated by the Commission in 1974, and codified into Note 1 in 1986, that ''[t]he use of existing buildings, towers or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged.''

2. Antennas Mounted on Existing Buildings and Towers

a. Clarification of ''Antenna''

5. The Commission first clarifies that the term ''antenna'' as used in Note 1 encompasses all on-site equipment associated with the antenna, including transceivers, cables, wiring, converters, power supplies, equipment cabinets and shelters, and other comparable equipment. The Commission concludes that this is the only logically consistent interpretation of the term, as associated equipment is a standard part of such collocations, and the antennas subject to NEPA review cannot operate without it. Thus, interpreting the term ''antenna'' as omitting associated equipment would eviscerate the categorical exclusion by requiring routine NEPA review for nearly every collocation. Such an interpretation would frustrate the categorical exclusion's purpose. The Commission also notes that its interpretation of ''antenna'' in this context is consistent with how the Commission has defined the term ''antenna'' in the comparable context of its process for reviewing effects of proposed deployments on historic properties. Specifically, the Commission's section 106 historic preservation review is governed by two programmatic agreements, and in both, the term ''antenna'' encompasses all associated equipment.

6. Further, if associated equipment presented significant concerns, the Commission would expect that otherwise excluded collocations that included such equipment would, at some point over the past 40 years, have been subject to environmental objections or petitions to deny. The Commission is unaware of any such objections or petitions directed at backup generators or any other associated equipment, or of any past EAs that found any significant environmental effect from such equipment. The Commission finds some commenters' generalized assertions of a risk of environmental effects to be unpersuasive, and the Commission reaffirms that the collocations covered by Note 1, including the collocation of associated equipment addressed by its clarification, will not individually or cumulatively have a significant effect on the human environment. While Alexandria *et al.* submit a declaration from Joseph Monaco asserting that ''[m]inor additions to existing facilities could have significant effects even if only incremental to past disturbances,'' the Commission finds this position is inconsistent with the Commission's finding that the mounting of antennas on existing towers and buildings will not have significant effects, and with the Commission's experience administering the NEPA process, in which a collocation has never been identified by the Commission or the public to have caused a significant environmental effect. The Commission further notes that the proffered examples appear to confuse consideration under the Commission's NEPA process with review under local process, which the Commission does not address here. To the extent that rare circumstances exist where ''even the smallest change could result in a significant effect, based on the intrinsic sensitivity of a particular resource,'' the Commission concludes that such extraordinary circumstances are appropriately addressed through sections 1.1307(c) and (d), as necessary.

7. The Commission finds unpersuasive Tempe's argument that the NEPA categorical exclusion for collocation should not encompass backup generators in particular. Tempe argues that generators cause ''fumes, noise, and the potential for exposure to hazardous substances if there is a leak or a spill'' and ''should not be allowed to be installed without the appropriate oversight.'' The Wireless Telecommunications Bureau addressed all of these potential impacts in its Final Programmatic Environmental Assessment for the Antenna Structure Registration Program (PEA), and did not find any to be significant. Tempe's own comments, moreover, confirm that backup generators are already subject to extensive local, State, and Federal regulation, suggesting that further oversight from the Commission would not meaningfully augment existing environmental safeguards. In assessing environmental effect, an agency may factor in an assumption that the action is performed in compliance with other applicable regulatory requirements in the absence of a basis in the record beyond mere speculation that the action threatens violations of such requirements. Tempe's comments support the Commission's conclusion that such regulations applicable to backup generators address Tempe's concerns. The Commission finds that cell sites with such generators will rarely if ever be grouped in sufficient proximity to present a risk of cumulative effects.

8. The Commission finds no reason to interpret ''antenna'' in the Note 1 NEPA collocation categorical exclusion to omit backup generators or other kinds of backup power equipment. The Commission finds that the term ''antenna'' as used in the categorical exclusion should be interpreted to encompass the on-site equipment associated with the antenna, including backup power sources. Further, the need for such power sources at tower sites is largely undisputed, as backup power is critical for continued service in the event of natural disasters or other power disruptions—times when the need and demand for such service is often at its greatest. The Commission amends Note 1 to clarify that the categorical exclusion encompasses equipment associated with the antenna, including the critical component of backup power.

9. Finally, the Commission notes that sections 1.1306(b)(1)–(3) and 1.1307(c) and (d) of its rules provide for situations where environmental concerns are presented and, as called for by the requirement that categorical exclusions include consideration of extraordinary circumstances, closer scrutiny and potential additional environmental review are appropriate. The Commission concludes that individual cases presenting extraordinary circumstances in which collocated generators or other associated equipment may have a significant effect on the environment, including cases in which closely spaced generators may have a significant cumulative effect or where the deployment of such generators would violate local codes in a manner that raises environmental concerns, will be adequately addressed through these provisions.

b. Antennas Mounted in the Interior of Buildings

10. The Commission clarifies that the existing NEPA categorical exclusion for mounting antennas ''on'' existing buildings applies to installations in the interior of existing buildings. An antenna mounted on a surface inside a building is as much ''on'' the building as an antenna mounted on a surface on the exterior, and the Commission finds nothing in the language of the categorical exclusion, in the adopting order, or in the current record supporting a distinction between collocations on the exterior or in the interior that would limit the scope of the categorical exclusion to exterior collocations. To the contrary, it is even more likely that indoor installations will have no significant environmental effects in the environmentally sensitive areas in which proposed deployments would generally trigger the need to prepare an EA, such as wilderness areas, wildlife preserves, and flood plains. The existing Note 1 collocation categorical exclusion reflects a finding that collocations do not individually or cumulatively have a significant effect on

the human environment, even if they would otherwise trigger the requirement of an EA under the criteria identified in sections 1.1307(a)(1)–(3) and (5)–(8). The Commission finds that this conclusion applies equally or even more strongly to an antenna deployed inside a building than to one on its exterior, since the building's exterior structure would serve as a buffer against any effects. The Commission notes that the First Responder Network Authority (FirstNet), the National Telecommunications and Information Administration (NTIA), and other agencies have adopted categorical exclusions covering internal modifications and equipment additions inside buildings and structures. For example, in adopting categorical exclusions as part of its implementation of the Broadband Technology Opportunities Program, NTIA noted that excluding interior modifications and equipment additions reflects long-standing categorical exclusions and administrative records, including in particular ''the legacy categorical exclusions from the U.S. Department of Agriculture, U.S. Department of Homeland Security, and the Federal Emergency Management Agency.'' While a Federal agency cannot apply another agency's categorical exclusion to a proposed Federal action, it may substantiate a categorical exclusion of its own based on another agency's experience with a comparable categorical exclusion. This long-standing practice of numerous agencies that conduct comparable activities, reflecting experience that confirms the propriety of the categorical exclusion, provides further support for the conclusion that internal collocations will not individually or cumulatively have a significant effect on the human environment. With respect to Tempe's concern about generators being placed inside buildings as the result of collocations, the Commission relies on local building, noise, and safety regulations to address these concerns, and the Commission anticipates that such regulations will almost always require generators to be outside of any residential buildings where their use would present health or safety concerns or else place very strict requirements on any placement in the interior. The Commission finds it appropriate to amend Note 1 to clarify that the Note 1 collocation categorical exclusion applies to the mounting of antennas in the interior of buildings as well as the exterior.

c. Antennas Mounted on Other Structures

11. The Commission adopts its proposal to extend the categorical exclusion for collocations on towers and buildings to collocations on other existing man-made structures. The Commission concludes that deployments covered by this extension will not individually or cumulatively have a significant impact on the human environment. The Commission updates the categorical exclusion adopted as part of Note 1 in 1986 to reflect the modern development of wireless technologies that can be collocated on a much broader range of existing structures. This measure will facilitate collocations and speed deployment of wireless broadband to consumers without significantly affecting the environment.

12. In finding that it is appropriate to broaden the categorical exclusion contained in section 1.1306 Note 1 to apply to other structures, the Commission relies in part on its prior findings regarding the environmental effects of collocations. In implementing NEPA requirements in 1974, for example, the Commission found that mounting an antenna on an existing building or tower ''has no significant aesthetic effect and is environmentally preferable to the construction of a new tower, provided there is compliance with radiation safety standards.'' In revising its NEPA rules in 1986, the Commission found that antennas mounted on towers and buildings are among those deployments that will normally have no significant impact on the environment. The Commission notes in particular that collocations will typically add only marginal if any extra height to a structure, and that in 2011, in a proceeding addressing the Commission's NEPA requirements with respect to migratory birds, the Commission reaffirmed that collocations on towers and buildings are unlikely to have environmental effects and thus such collocations are categorically excluded from review for impact on birds. Further, given that towers and buildings are typically much taller than other man-made structures on which antennas will be collocated, the Commission expects that there will be even less potential for significant effects on birds from collocations on such other structures.

13. In the *Infrastructure NPRM,* the Commission tentatively concluded that the same determination applies with regard to collocations on other structures such as utility poles and water towers. Numerous commenters support this determination, and opponents offer no persuasive basis to distinguish the environmental effects of collocations on antenna towers and buildings from the effects of collocations on other existing structures. Indeed, in this regard, the Commission notes that buildings and towers, which are already excluded under Note 1, are typically taller than structures such as utility poles and road signs. While some commenters raise concerns about possible water-tank contamination or driver distraction, these concerns do not present persuasive grounds to limit the categorical exclusion. Under sections 1.1306(a) and (b), collocations on structures such as water tanks and road signs are already categorically excluded from the obligation to file an EA unless they occur in the environmentally sensitive circumstances identified in sections 1.1307(a) or (b) (such as in wildlife preserves or flood plains). Nothing in the record leads the Commission to find that collocations in such sensitive areas that currently require EAs present greater risks of water tank contamination or driver distraction than collocations outside such areas. For similar reasons, the Commission is also not persuaded by Springfield's argument that extending the categorical exclusion to other structures without ''qualifying delimitations for how DAS facilities are defined and where they may be installed may have unacceptable impacts on historic and other sensitive neighborhoods.'' Springfield offers no argument to explain why the NEPA categorical exclusion for collocations on utility poles should be more restrictive than the exclusion for collocations on buildings. Moreover, the Commission notes that the NEPA categorical exclusion the Commission addresses here does not exclude the proposed collocation from NHPA review for effects on historic properties or historic districts.

14. The Commission also notes that the exclusion from section 106 review in the Collocation Agreement is not limited to collocations on towers and buildings but also specifically includes collocations on other existing non-tower structures. Further, the U.S. Fish and Wildlife Service has found collocations on existing non-tower structures to be environmentally desirable with regard to impacts on birds, noting that they will in virtually every circumstance have less impact than would construction of a new tower.

15. Considering that collocating on these structures is necessary for broadband deployment, and in light of the environmental benefits of

encouraging collocation rather than the construction of new structures, the Commission finds that extending the categorical exclusion to other structures advances the public interest and meets its obligations under NEPA.

3. Categorical Exclusion of Deployments in Communications or Utilities Rights-of-Way

16. The Commission adopts a categorical exclusion for certain wireless facilities deployed in above-ground utility and communications rights-of-way. The Commission finds that such deployments will not individually or cumulatively have a significant effect on the environment. Given that DAS and small-cell nodes are often deployed in communications and utilities rights-of-way, the Commission concludes that the categorical exclusion will significantly advance the deployment of such facilities in a manner that safeguards environmental values.

17. Specifically, this categorical exclusion, which the Commission incorporates into its rules as section 1.1306(c), covers construction of wireless facilities, including deployments on new or replacement poles, only if: (1) The facility will be located in a right-of-way that is designated by a Federal, State, local, or Tribal government for communications towers, above-ground utility transmission or distribution lines, or any associated structures and equipment; (2) the right-of-way is in active use for such designated purposes; and (3) the facility will not constitute a substantial increase in size over existing support structures that are located in the right-of-way within the vicinity of the proposed construction.

18. Although the Commission sought comment, in the *Infrastructure NPRM,* on whether to adopt a categorical exclusion that covered facilities also located within fifty feet of a communications or utility right-of-way, similar to the exclusion from section 106 review in section III.E. of the National Programmatic Agreement (NPA), the Commission limits its NEPA categorical exclusion to facilities deployed within existing communications and utility rights-of-way. Industry commenters that support applying the categorical exclusion to deployments within fifty feet of a right-of-way do not explain why the conclusion that deployments in the right-of-way will not have a significant effect on the human environment also apply outside of a right-of-way. Such ground would not necessarily be in active use for the designated purposes, and there could well be a greater potential outside the right-of-way for visual impact or new or significant ground disturbance that might have the potential for significant environmental effects. Finally, the record supports the conclusion that a categorical exclusion limited to deployments within the rights-of-way will address most of the deployments that would be covered by a categorical exclusion that also encompassed deployments nearby. Sprint, for example, emphasizes that ''many DAS and small cells will be attached to existing structures and installed *within utility rights-of-way corridors.*''

19. For purposes of this categorical exclusion, the Commission defines a substantial increase in size in similar fashion to how it is defined in the Collocation Agreement. Thus, a deployment would result in a substantial increase in size if it would: (1) Exceed the height of existing support structures that are located in the right-of-way within the vicinity of the proposed construction by more than 10% or twenty feet, whichever is greater; (2) involve the installation of more than four new equipment cabinets or more than one new equipment shelter; (3) add an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater (except that the deployment may exceed this size limit if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable); or (4) involve excavation outside the current site, defined as the area that is within the boundaries of the leased or owned property surrounding the deployment or that is in proximity to the structure and within the boundaries of the utility easement on which the facility is to be deployed, whichever is more restrictive.

20. The Commission notes that it has found a similar test appropriate in other contexts, including under its environmental rules. In particular, the first three criteria that the Commission specifies above to define the scope of the NEPA rights-of-way categorical exclusion also define the scope of the rights-of-way exclusion from historic preservation review under the NPA. Similarly, for purposes of Antenna Structure Registration, the Commission does not require environmental notice for a proposed tower replacement if, among other criteria, the deployment will not cause a substantial increase in size under the first three criteria of the Collocation Agreement, and there will be no construction or excavation more than 30 feet beyond the existing antenna structure property. Further, given that the industry now has almost a decade of experience applying this substantial increase test to construction in the rights-of-way under the NPA exclusion, and in light of the efficiencies to be gained from using a similar test here, the Commission finds the Collocation Agreement test, as modified here, to be appropriate in this context.

21. The Commission concludes that facilities subject to this categorical exclusion will not have a significant effect on the environment either individually or cumulatively, and that the categorical exclusion is appropriate. In the *NPA Report and Order,* 70 FR 556 Jan 4, 2005, the Commission found that excluding construction in utilities or communications rights-of-way from historic preservation review was warranted because, ''[w]here such structures will be located near existing similar poles, . . . the likelihood of an incremental adverse impact on historic properties is minimal.'' The Commission finds that the potential incremental impacts on the environment are similarly minimal. Indeed, deploying these facilities should rarely involve more than minimal new ground disturbance, given that constructing the existing facilities likely disturbed the ground already and given the limitations on the size of any new poles. Moreover, any new pole will also cause minimal visual effect because by definition comparable structures must already exist in the vicinity of the new deployment in that right-of-way, and new poles covered by this categorical exclusion will not be substantially larger. Further, because such corridors are already employed for utility or communications uses, and the new deployments will be comparable in size to such existing uses, these additional uses are unlikely to trigger new NEPA concerns. Any such concerns would have already been addressed when such corridors were established, and the size of the deployments the Commission categorically excludes will not be substantial enough to raise the prospect of cumulative effects.

22. The Commission also finds support for these conclusions in the categorical exclusions adopted by other agencies, including FirstNet. In establishing its own categorical exclusions, FirstNet noted as part of its Administrative Record that its anticipated activities in constructing a nationwide public safety broadband network would primarily include ''the installation of cables, cell towers, antenna collocations, buildings, and

power units,'' for example in connection with ''Aerial Plant/Facilities,'' ''Towers,'' ''Collocations,'' ''Power Units,'' and ''Wireless Telecommunications Facilit[ies.]'' It defined a ''Wireless Telecommunications Facility'' as ''[a]n installation that sends and/or receives radio frequency signals, including directional, omni-directional, and parabolic antennas, structures, or towers (no more than 199 feet tall with no guy wires), to support receiving and/or transmitting devices, cabinets, equipment rooms, accessory equipment, and other structures, and the land or structure on which they are all situated.'' To address its NEPA obligations in connection with these activities, FirstNet adopted a number of categorical exclusions, including a categorical exclusion for ''[c]onstruction of wireless telecommunications facilities involving no more than five acres (2 hectares) of physical disturbance at any single site.'' In adopting this categorical exclusion, FirstNet found that it was ''supported by long-standing categorical exclusions and administrative records. In particular, these include categorical exclusions from the U.S. Department of Commerce, U.S. Department of Agriculture, and U.S. Department of Energy.''

23. The Commission finds that FirstNet's anticipated activities encompass the construction of wireless facilities and support structures in the rights-of-way, and are therefore comparable to the wireless facility deployments the Commission addresses here. Further, the Commission notes that the categorical exclusions adopted by FirstNet are broader in scope than the categorical exclusion the Commission adopts for facilities deployed within existing rights-of-way. The Commission further notes that several other agencies have found it appropriate to categorically exclude other activities in existing rights-of-way unrelated to telecommunications.

24. The Commission finds that the categorical exclusion addresses some concerns raised by municipalities, and the Commission finds that other concerns they raise are not relevant to the environmental review process. First, the Commission notes that the categorical exclusion it adopts addresses Coconut Creek's objection to above-ground deployments in areas with no above-ground infrastructure because the Commission limits it to rights-of-way in active use for above-ground utility structures or communications towers. Second, concerns about hazards to vehicular or pedestrian traffic are logically inapplicable. As the Commission noted in connection with deployments on structures other than communications towers and buildings, such concerns do not currently warrant the submission of an EA. Rather, EAs are routinely required for deployments in communications or utility rights-of-way only if they meet one of the criteria specified in section 1.1307(a) or (b). Deployments in the communications or utility rights-of-way have never been identified in the Commission's rules as an environmentally sensitive category; indeed, the use of such rights-of-way for antenna deployments is environmentally desirable as compared to deployments in other areas. Finally, the Commission finds it unnecessary to adopt Tempe's proposed limitation, whether it is properly understood as a proposal to categorically exclude only one non-substantial increase at a particular site or in the same general vicinity, as such limitation has proven unnecessary in the context of historic preservation review. Having concluded that wireless facility deployments in communications or utility rights-of-way have no potentially significant environmental effects individually or cumulatively, the Commission finds no basis to limit the number of times such a categorical exclusion is used either at a particular site or in the same general vicinity. Indeed, the categorical exclusion encourages an environmentally responsible approach to deployment given that, as Note 1 and section 1.1306(c) make clear, the use of existing corridors ''is an environmentally desirable alternative to the construction of new facilities.'' And, apart from environmental considerations, it would be contrary to the public interest to unnecessarily limit the application of this categorical exclusion.

25. To the extent that commenters propose extending the Note 1 aerial and underground corridor categorical exclusion to include components of telecommunications systems other than wires and cables, the Commission declines to do so. The Commission finds that the new section 1.1306(c) categorical exclusion the Commission adopts for deployments in communications or utilities rights-of-way will provide substantial and appropriate relief, and that the record in this proceeding does not justify a further expansion of the Note 1 categorical exclusion. Further, the existing Note 1 categorical exclusion for wires and cables in underground and aerial corridors is broader than the categorical exclusion for installations on existing buildings or antenna towers because it is not limited by section 1.1307(a)(4) (section 106 review) or 1.1307(b) (RF emissions), while collocations on existing buildings or towers are subject to these provisions. The Commission notes that even parties advocating an extension of the categorical exclusion for installation of wire and cable to additional telecommunications components concede that the extension should not apply to review of RF emissions exposure, as the existing categorical exclusion does. This distinction underscores that the existing categorical exclusion of cables and wires in aerial and underground corridors is based on an analysis that does not directly apply to other communications facilities.

B. NHPA Exclusions

1. Regulatory Background

26. Section 1.1307(a)(4) of the Commission's rules directs licensees and applicants, when determining whether a proposed action may affect historic properties, to follow the procedures in the rules of the Advisory Council on Historic Preservation (ACHP) as modified by the Collocation Agreement and the NPA, two programmatic agreements that took effect in 2001 and 2005, respectively. The Collocation Agreement excludes collocations on buildings or other non-tower structures outside of historic districts from routine section 106 review unless: (1) The structure is inside the boundary of a historic district, or it is within 250 feet of the boundary of a historic district and the antenna is visible from ground level within the historic district; (2) the structure is a designated National Historic Landmark or is listed in or eligible for listing in the National Register of Historic Places (National Register); (3) the structure is over 45 years old; or (4) the proposed collocation is the subject of a pending complaint alleging adverse effect on historic properties.

2. New Exclusions

27. In addition to seeking comment on whether the Commission should add an exclusion from section 106 review for DAS and small cells generally, the *Infrastructure NPRM* sought comment on whether to expand the existing categorical exclusion for collocations to cover collocations on structures subject to review solely because of the structure's age—that is, to deployments that are more than 45 years old but that are not (1) inside the boundary of a historic district, or within 250 feet of the boundary of a historic district; (2) located on a structure that is a

designated National Historic Landmark or is listed in or eligible for listing in the National Register; or (3) the subject of a pending complaint alleging adverse effect on historic properties.

28. As an initial matter, the Commission finds no basis to hold categorically that small wireless facilities such as DAS and small cells are not Commission undertakings. While PCIA argues that small facilities could be distinguished, it does not identify any characteristic of such deployments that logically removes them from the analysis applicable to other facilities. Having determined that DAS and small cell deployments constitute Federal undertakings subject to section 106, the Commission considers its authority based on section 800.3(a)(1) of ACHP's rules to exclude such small facility deployments from section 106 review. It is clear under the terms of section 800.3(a)(1) that a Federal agency may determine that an undertaking is a type of activity that does not have the potential to cause effects to historic properties, assuming historic properties were present, in which case, ''the agency has no further obligations under section 106 or this part [36 part 800, subpart B].''

29. The commenters that propose a general exclusion for DAS and small cell deployments assert that under any circumstances, such deployments have the potential for at most minimal effects, but they do not provide evidence to support such a broad conclusion. Moreover, several commenters, including several SHPOs, express concerns that such deployments do have the potential for effects in some cases. The Commission cannot find on this record that DAS and small-cell facilities qualify for a general exclusion, and the Commission therefore concludes, after consideration of the record, that any broad exclusion of such facilities must be implemented at this time through the development of a ''program alternative'' as defined under ACHP's rules. The Commission is committed to making deployment processes as efficient as possible without undermining the values that section 106 protects. The Commission staff are working on a program alternative that, through consultation with stakeholders, will ensure thorough consideration of all applicable interests, and will culminate in a system that eliminates additional bureaucratic processes for small facilities to the greatest extent possible consistent with the purpose and requirements of section 106.

30. The Commission further concludes that it is in the public interest to immediately adopt targeted exclusions from its section 106 review process that will apply to small facilities (and in some instances larger antennas) in many circumstances and thereby substantially advance the goal of facilities deployment. The Commission may exclude activities from section 106 review upon determining that they have no potential to cause effects to historic properties, assuming such properties are present. As discussed in detail below, the Commission finds two targeted circumstances that meet this test, one applicable to utility structures and the other to buildings and any other non-tower structures. Pursuant to these findings the Commission establishes two exclusions.

31. First, the Commission excludes collocations on existing utility structures, including utility poles and electric transmission towers, to the extent they are not already excluded in the Collocation Agreement, if: (1) The collocated antenna and associated equipment, when measured together with any other wireless deployment on the same structure, meet specified size limitations; and (2) the collocation will involve no new ground disturbance. Second, the Commission excludes collocations on a building or other non-tower structure, to the extent they are not already excluded in the Collocation Agreement, if: (1) There is an existing antenna on the building or other structure; (2) certain requirements of proximity to the existing antenna are met, depending on the visibility and size of the new deployment; (3) the new antenna will comply with all zoning conditions and historic preservation conditions on existing antennas that directly mitigate or prevent effects, such as camouflage or concealment requirements; and (4) the deployment will involve no new ground disturbance. With respect to both of these categories—utility structures and other non-tower structures—the Commission extends the exclusion only to deployments that are not (1) inside the boundary of a historic district, or within 250 feet of the boundary of a historic district; (2) located on a structure that is a designated National Historic Landmark or is listed in or eligible for listing in the National Register; or (3) the subject of a pending complaint alleging adverse effect on historic properties. In other words, these exclusions address collocations on utility structures and other non-tower structures where historic preservation review would otherwise be required under existing rules only because the structures are more than 45 years old. The Commission's action here is consistent with its determination in the NPA to apply a categorical exclusion based upon a structure's proximity to a property listed in or eligible to be listed in the National Register rather than whether a structure is over 45 years old regardless of eligibility. Consistent with section 800.3(a)(1), the Commission finds collocations meeting the conditions stated above have no potential to affect historic properties even if such properties are present. The Commission nevertheless finds it appropriate to limit the adopted exclusions. Given the sensitivities articulated in the record, particularly those from the National Conference of State Historic Preservation Officers (NCSHPO) and other individual commenting SHPOs, regarding deployments in historic districts or on historic properties, the Commission concludes that any broader exclusions require additional consultation and consideration, and are more appropriately addressed and developed through the program alternative process that Commission staff have already begun.

a. Collocations on Utility Structures

32. Pursuant to section 800.3(a)(1) of ACHP's rules, the Commission finds that antennas mounted on existing utility structures have no potential for effects on historic properties, assuming such properties are present, where the deployment meets the following conditions: (1) The antenna and any associated equipment, when measured together with any other wireless deployments on the same structure, meets specified size limitations; and (2) the deployment will involve no new ground disturbance. Notwithstanding this finding of no potential for effects even assuming historic properties are present, the Commission limits this exclusion (as described above) in light of the particular sensitivities related to historic properties and districts. Accordingly, this exclusion does not apply to deployments that are (1) inside the boundary of a historic district, or within 250 feet of the boundary of a historic district; (2) located on a structure that is a designated National Historic Landmark or is listed in or eligible for listing in the National Register; or (3) the subject of a pending complaint alleging adverse effect on historic properties. In other words, this new targeted exclusion addresses collocations on utility structures where historic preservation review would otherwise be required under existing rules only because the structures are more than 45 years old.

33. For purposes of this exclusion, the Commission defines utility structures as utility poles or electric transmission towers in active use by a ''utility'' as defined in section 224 of the Communications Act, but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting. Utility structures are, by their nature, designed to hold a variety of electrical, communications, or other equipment, and they already hold such equipment. Their inherent characteristic thus incorporates the support of attachments, and their uses have continued to evolve with changes in technology since they were first used in the mid-19th century for distribution of telegraph services. Indeed, the Commission notes that other, often larger facilities are added to utility structures without review. For example, deployments of equipment supporting unlicensed wireless operations like Wi-Fi access occur without the Commission's section 106 review in any case, as do installations of non-communication facilities such as municipal traffic management equipment or power equipment such as electric distribution transformers. The addition of DAS or small cell facilities to these structures is therefore fully consistent with their existing use.

34. While the potential for effects from any deployments on utility structures is remote at most, the Commission concludes that the additional conditions described above support a finding that there is no such potential at all, assuming the presence of historic properties. First, the Commission limits the size of equipment covered by this exclusion. In doing so, the Commission draws on a PCIA proposal, which includes separate specific volumetric limits for antennas and for enclosures of associated equipment, but the Commission modifies the definition in certain respects to meet the standard in ACHP's rules that the undertaking must have no potential for effects. Specifically, the Commission provides that the deployment may include covered antenna enclosures no more than three cubic feet in volume per enclosure, or exposed antennas that fit within an imaginary enclosure of no more than three cubic feet in volume per imaginary enclosure, up to an aggregate maximum of six cubic feet. The Commission further provides that all equipment enclosures (or imaginary enclosures) associated with the collocation on any single structure, including all associated equipment but not including separate antennas or enclosures for antennas, must be limited cumulatively to seventeen cubic feet in volume. Further, collocations under this rule will be limited to collocations that cause no new ground disturbance.

35. Because the Commission finds that multiple collocations on a utility structure could have a cumulative impact, the Commission further applies the size limits defined above on a cumulative basis taking into account all pre-existing collocations. Specifically, if there is a pre-existing wireless deployment on the structure, and any of this pre-existing equipment would remain after the collocation, then the volume limits apply to the cumulative volume of such pre-existing equipment and the new collocated equipment. Thus, for the new equipment to come under this exclusion, the sum of the volume of all pre-existing associated equipment that remains after the collocation and the new equipment must be no greater than seventeen cubic feet, and the sum of the volume of all collocated antennas, including pre-existing antennas that remain after the collocation, must be no greater than six cubic feet. The Commission further provides that the cumulative limit of seventeen cubic feet for wireless equipment applies to all equipment on the ground associated with an antenna on the structure as well as associated equipment physically on the structure. Thus, application of the limit is the same regardless of whether equipment associated with a particular deployment is deployed on the ground next to a structure or on the structure itself. While some commenters oppose an exclusion based solely on PCIA's volumetric definition, the Commission finds that the Commission's exclusion addresses their concerns. For example, Tempe and the CA Local Governments express concern that PCIA's definition would allow an unlimited number of ground-mounted cabinets. The Commission's approach provides that associated ground equipment must also come within the volumetric limit for equipment enclosures, however, and therefore does not allow for unlimited ground-based equipment. Further, because the Commission applies the size limit on a cumulative basis, the Commission's exclusion directly addresses concerns that the PCIA definition would allow multiple collocations that cumulatively exceed the volumetric limits. Consistent with a proposal by PCIA, the Commission finds that certain equipment should be omitted from the calculation of the equipment volume, including: (1) Vertical cable runs for the connection of power and other services, the volume of which may be impractical to calculate and which should in any case have no effect on historic properties, consistent with the established exclusion of cable in pre-existing aerial or underground corridors; (2) ancillary equipment installed by other entities that is outside of the applicant's ownership or control, such as a power meter installed by the electric utility in connection with the wireless deployment, and (3) comparable equipment from pre-existing wireless deployments on the structure.

36. To meet the standard under section 800.3(a)(1), the Commission further imposes a requirement of no new ground disturbance, consistent for the most part with the NPA standard. Under the NPA standard, no new ground disturbance occurs so long as the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet. The Commission finds that footings and anchorings should be included in this context to ensure no potential for effects. Therefore, the Commission's finding is limited to cases where there is no ground disturbance or the depth and width of previous disturbance exceeds the proposed construction depth and width, including the depth and width of any proposed footings or other anchoring mechanisms, by at least two feet. Some Tribal Nations have indicated that exclusions of small facilities from section 106 review might be reasonable if there is no excavation but that any ground disturbance would be cause for concern. The Commission finds that the restrictions it places on both of the Commission's new section 106 exclusions are sufficient to address this concern and ensure that there is no potential for effects on historic properties of Tribal religious or cultural significance. These restrictions include a strict requirement for both exclusions of no new ground disturbance and restrictions on the size and placement of equipment. Furthermore, both exclusions are limited to collocations (and therefore do not include new or replacement support structures).

37. Adoption of this exclusion will provide significant efficiencies in the section 106 process for DAS and small-cell deployments. Many DAS and small-cell installations involve collocations on utility structures. PCIA also estimates that excluding collocations on these wooden poles would increase the estimated number of excluded collocation structures by a factor of 10—which would dramatically advance wireless infrastructure deployment

without impacting historic preservation values.

b. Collocations on Buildings and Other Non-Tower Structures

38. Verizon proposes an exclusion for collocations on any building or other structure over 45 years old if: (1) The antenna will be added in the same location as other antennas previously deployed; (2) the height of the new antenna will not exceed the height of the existing antennas by more than three feet, or the new antenna will not be visible from the ground regardless of the height increase; and (3) the new antenna will comply with any requirements placed on the existing antennas by the State or local zoning authority or as a result of any previous historic preservation review process.

39. Section 800.3(a)(1) of ACHP rules authorizes an exclusion only where the undertaking does not have the potential to cause effects on historic properties, assuming such historic properties are present. While the Commission concludes that this standard allows for an exclusion applicable to many collocations on buildings and other structures that already house collocations, the Commission finds insufficient support in the record to adopt Verizon's proposed exclusion in its entirety. While Verizon states that adding an antenna to a building within the scope of its proposal would not have an effect that differs from those caused by existing antennas, the Commission must also consider the cumulative effects of additional deployments on the integrity of a historic property to the extent that they add incompatible visual elements. Further, while Verizon relies heavily on the requirement that any new deployment must meet the same conditions as the existing deployment, the Commission cannot assume that conditions placed on a previous deployment are always sufficient to prevent any effects, particularly in the event of multiple additional deployments. Indeed, it is often the case that mitigating conditions are designed to offset effects rather than eliminate or reduce them entirely. The Commission concludes that with certain modifications to Verizon's proposal, deployments covered by the test would have no potential for effects.

40. Specifically, the Commission finds that collocations on buildings or other non-tower structures over 45 years old will have no potential for effects on historic properties if: (1) There is an existing antenna on the building or structure; (2) one of the following criteria is met: (a) The new antenna will not be visible from any adjacent streets or surrounding public spaces and will be added in the same vicinity as a pre-existing antenna; (b) the new antenna will be visible from adjacent streets or surrounding public spaces, provided that (i) it will replace a pre-existing antenna, (ii) the new antenna will be located in the same vicinity as the pre-existing antenna, (iii) the new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna, (iv) the new antenna will not be more than three feet larger in height or width (including all protuberances) than the pre-existing antenna, and (v) no new equipment cabinets will be visible from the adjacent streets or surrounding public spaces; or (c) the new antenna will be visible from adjacent streets or surrounding public spaces, provided that (i) it will be located in the same vicinity as a pre-existing antenna, (ii) the new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna, (iii) the pre-existing antenna was not deployed pursuant to the exclusion based on this finding, (iv) the new antenna will not be more than three feet larger in height or width (including all protuberances) than the pre-existing antenna, and (v) no new equipment cabinets will be visible from the adjacent streets or surrounding public spaces; (3) the new antenna will comply with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage or concealment requirements; and (4) the deployment of the new antenna will involve no new ground disturbance. Notwithstanding its finding of no potential for effects even assuming historic properties are present, the Commission limits this exclusion in light of many parties' particular sensitivities related to historic properties and districts. As with the exclusion for collocations on utility poles, this exclusion does not apply to deployments that are (1) inside the boundary of a historic district, or within 250 feet of the boundary of a historic district; (2) located on a structure that is a designated National Historic Landmark or is listed in or eligible for listing in the National Register; or (3) the subject of a pending complaint alleging adverse effect on historic properties. In other words, this new targeted exclusion addresses collocations on non-tower structures where historic preservation review would otherwise be required under existing rules only because the structures are more than 45 years old.

41. Consistent with the Verizon proposal, the Commission requires that there must already be an antenna on the building or other structure and that the new antenna be in the same vicinity as the pre-existing antenna. For this purpose, a non-visible new antenna is in the ''same vicinity'' as a pre-existing antenna if it will be collocated on the same rooftop, façade or other surface, and a visible new antenna is in the ''same vicinity'' as a pre-existing antenna if it is on the same rooftop, façade, or other surface and the centerpoint of the new antenna is within 10 feet of the centerpoint of the pre-existing antenna. Combined with the other criteria discussed below, this requirement is designed to assure that a new antenna will not have any incremental effect on historic properties, assuming they exist, as there will be no additional incompatible elements.

42. In addition to Verizon's proposed requirement that the deployment be in the same vicinity as an existing antenna, the Commission also adopts a condition of no-visibility from adjoining streets or any surrounding public spaces, with two narrow exceptions. For the general case, the Commission's no-effects finding will apply only to a new antenna that is not visible from any adjacent streets or surrounding public spaces and is added in the same vicinity as a pre-existing antenna. In adopting this standard, the Commission is informed by the record and also in part by General Services Administration (GSA) Preservation Note 41, entitled ''Administrative Guide for Submitting Antenna Projects for External Review.'' Preservation Note 41 recommends that an agency may recommend a finding of no effect where the antenna will not be visible from the surrounding public space or streets and the antenna will not harm original historic materials or their replacements-in-kind. The Commission notes that, in addition to the measures ensuring that there are no incremental visual effects from covered facilities, the Commission's finding of no effects in this case is also implicitly based on a requirement, as the GSA Note recommends, that the deployment will not harm original historic materials. Even assuming a building is historic, however, as required by section 800.3(a)(1), this ''no harm'' criterion would be satisfied by ensuring that any anchoring on the building was not performed on the historic materials of the property or their replacements-in-kind. It is therefore unnecessary to expressly impose a ''no harm'' condition

in this case, as the exclusion the Commission adopts does not apply to historic properties. Necessarily, any anchoring of deployments subject to the exclusion will not be in any historic materials of the property. The Commission also notes that, under the criteria the Commission adopts, the deployment will occur only where another antenna has already been reviewed under section 106 and approved for deployment in the same vicinity, and any conditions imposed on that prior deployment to minimize or eliminate historic impact, including specifications of where, how, or under what conditions to construct, are part of the Commission's ''no effect'' finding and would apply as a condition of the exclusion.

43. The Commission makes a narrow exception to the no-visibility requirement where the new antenna would replace an existing antenna in the same vicinity and where the addition of the new antenna would not constitute a substantial increase in size over the replaced antenna. In this situation, no additional incompatible visual element is being added, as one antenna is a substitution for the other. The Commission permits an insubstantial increase in size in this situation. For purposes of this criterion, the replacement facility would represent a substantial increase in size if it is more than three feet larger in height or width (including all protuberances) than the existing facility, or if it involves any new equipment cabinets that are visible from the street or adjacent public spaces. The Commission declines to adopt the NPA definition of ''substantial increase,'' which allows greater increases in height or width in some cases, because it applies to towers, not to antenna deployments, and it is therefore overbroad with respect to the replacement of an existing antenna. The Commission further notes that no one has objected to Verizon's proposed limit on increases of three feet in this context. Also, since the Commission is required to ensure no potential for effects on historic properties assuming such properties are present, the Commission finds it appropriate to adopt a more stringent test than in the context of a program alternative. For these reasons, any increase in the number of equipment cabinets that are visible from the street or adjacent public spaces in connection with a replacement antenna constitutes a substantial increase in size. In combination with the requirements that the new antenna be within 10 feet of the replaced antenna and that the pre-existing antenna be visible from any ground perspective that would afford a view of the new antenna these requirements ensure that the replacement deployment will not have an additional visual effect.

44. Under its second partial exception to the no-visibility requirement, the new antenna may be in addition to, rather than a replacement of, a pre-existing antenna, but must meet the other requirements applicable to replacement antennas. The Commission requires that the pre-existing antenna itself not have been deployed pursuant to this exception. While this exception will allow an additional visual element to be added, the element is again limited to a comparably-sized antenna in the same viewshed (and again does not include any new visible associated equipment). Further, because the pre-existing antenna may not itself have been deployed pursuant to this no-effects finding, deployments cannot be daisy-chained across the structure, which might present a potential for cumulative effects.

45. Consistent with the Verizon proposal, the Commission requires that the new antenna comply with all zoning and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage, concealment, or painting requirements. The Commission does not extend that requirement to conditions that have no direct relationship to the facility's effect or how the facility is deployed, such as a condition that requires the facility owner to pay for historic site information signs or other conditions intended to offset harms rather than prevent them. Its goal is to assure that any new deployments have no effects on historic properties. Payments or other forms of mitigation applied to antennas previously deployed on the building or structure that were intended to compensate for any adverse effect on historic properties caused by those antennas but were not intended to prevent that effect from occurring do not advance its goal of assuring no effects from such collocations. The Commission does not require that the new antenna comply with such conditions.

46. As with the exclusion the Commission adopts for collocations on utility structures, the Commission imposes a strict requirement of no new ground disturbance. Thus, the exclusion will permit ground disturbance only where the depth and width of previous disturbance exceeds the proposed construction depth and width (including footings and other anchoring mechanisms) by at least two feet.

3. Antennas Mounted in the Interior of Buildings

47. The Collocation Agreement provides that ''[a]n antenna may be mounted on a building'' without section 106 review except under certain circumstances, *e.g.,* the building is a historic property or over 45 years of age. The Commission clarifies that section V of the Collocation Agreement covers collocations in buildings' interiors. Given the limited scope of the exclusion of collocations on buildings under the Collocation Agreement (*e.g.,* the building may not itself be listed in or eligible for listing in the National Register or in or near a historic district), there is no reason to distinguish interior collocations from exterior collocations for purposes of assessing impacts on historic properties.

II. Environmental Notification Exemption for Registration of Temporary Towers

48. If pre-construction notice of a tower to the FAA is required, the Commission's rules also require the tower owner to register the antenna structure in the Commission's Antenna Structure Registration (ASR) system, prior to construction or alteration. To fulfill responsibilities under NEPA, the Commission requires owners of proposed towers, including temporary towers that must be registered in the ASR system to provide local and national notice prior to submitting a completed ASR application. Typically, the ASR notice process takes approximately 40 days.

49. On May 15, 2013, in the *Environmental Notification Waiver Order* (*Waiver Order*), the Commission granted an interim waiver of the ASR environmental notification requirements for temporary towers meeting certain criteria. The Commission provided that the interim waiver would remain in effect pending the completion of a rulemaking to address the issues raised in the petition. In the *Infrastructure NPRM,* the Commission proposed to adopt a permanent exemption from the ASR pre-construction environmental notification requirements consistent with the interim exemption granted in the *Waiver Order.*

50. The Commission now adopts a permanent exemption from its ASR environmental notification requirements for temporary towers that (1) will be in place for no more than 60 days; (2) require notice of construction to the FAA; (3) do not require marking or lighting under FAA regulations; (4) will be less than 200 feet in height; and (5) will either involve no excavation or

involve excavation only where the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet. The Commission finds that establishing the proposed exemption is consistent with its obligations under NEPA and the Council on Environmental Quality (CEQ) regulations, and will serve the public interest.

51. As the Commission observed in the *Infrastructure NPRM,* the ASR notice process takes approximately 40 days and can take as long as two months. The record confirms that absent the exemption, situations would arise where there is insufficient time to complete this process before a temporary tower must be deployed to meet near-term demand. The record, as well as the Commission's own experience in administering the environmental notice rule, shows that a substantial number of temporary towers that would qualify for the exemption require registration. The Commission finds that absent an exemption, application of the ASR notice process to these temporary towers will interfere with the ability of service providers to meet important short term coverage and capacity needs.

52. At the same time, the benefits of environmental notice are limited in the case of temporary towers meeting these criteria. The purpose of environmental notice is to facilitate public discourse regarding towers that may have a significant environmental impact. The Commission finds that towers meeting the specified criteria are highly unlikely to have significant environmental effects due to their short duration, limited height, absence of marking or lighting, and minimal to no excavation. As the Commission explained in the *Waiver Order,* its experience in administering the ASR public notice process confirms that antenna structures meeting the waiver criteria rarely if ever generate public comment regarding potentially significant environmental effects or are determined to require further environmental processing. In particular, since the *Waiver Order* has been in place, the Commission has seen no evidence that a temporary tower exempted from notification by the waiver has had or may have had a significant environmental effect. The Commission finds that the limited benefits of notice in these cases do not outweigh the potential detriment to the public interest of prohibiting the deployment of towers in circumstances in which the notification process cannot be completed quickly enough to address short-term deployment needs. Further, having concluded that pre-construction environmental notification is categorically unnecessary in the situations addressed here, the Commission finds it would be inefficient to require the filing and adjudication of individual waiver requests for these temporary towers. The Commission concludes that adoption of the exemption is warranted.

53. The Commission also adopts the proposal to require no post-construction environmental notice for temporary towers that qualify for the exemption. Ordinarily, when pre-construction notice is waived due to an emergency situation, the Commission requires environmental notification shortly after construction because such a deployment may be for a lengthy or indefinite period of time. The Commission finds that requiring post-construction notification for towers intended to be in place for the limited duration covered by the exemption is not in the public interest as the exempted period is likely to be over or nearly over by the time the notice period ends. Additionally, the Commission notes again that it has rarely seen temporary antenna structures generate public comment regarding potentially significant environmental effects. The Commission further notes that of the many commenters supporting an exemption, none opposed its proposal to exempt qualifying temporary towers from post-construction environmental notification.

54. The Commission finds that the objections to the proposed exemption raised by Lee County, Tempe, and Orange County are misplaced. They express concerns that a temporary towers exemption would eliminate local review (including local environmental review) and antenna structure registration requirements. The exemption the Commission adopts does neither of these things. First, the temporary towers measure does not exempt any deployment from any otherwise applicable requirement under the Commission's rules to provide notice to the FAA, to obtain an FAA ''no-hazard'' determination, or to complete antenna structure registration. In raising its concern, Orange County notes that it ''operates . . . a large regional airport that has recently expanded through construction of a third terminal.'' The Commission finds the exemption poses no threat to air safety. As noted, deployments remains subject to all applicable requirements to notify the FAA and register the structure in the ASR system. If the Commission or the FAA requires either painting or lighting, *i.e.,* because of a potential threat to aviation, the exemption does not apply. Nor does the exemption impact any local requirements. Further, the Commission provides, as proposed in the *Infrastructure NPRM,* that towers eligible for the notification exemption are still required to comply with the Commission's other NEPA requirements, including filing an EA in any of the environmentally sensitive circumstances identified by the rules. The Commission further provides that if an applicant determines that it needs to complete an EA for a temporary tower otherwise eligible for the exemption, or if the relevant bureau makes this determination pursuant to section 1.1307(c) or (d) of the Commission's rules, the application will not be exempt from the environmental notice requirement.

55. The Commission concludes that making the exemption available for towers less than 200 feet above ground level is appropriate and adequate to ensure that the exemption serves the public interest both by minimizing potential significant environmental effects and by enabling wireless providers to more effectively respond to large or unforeseen spikes in demand for service. CTIA indicates that carriers deploy temporary towers more than 150 feet tall to replace damaged towers of similar height, and that having to use shorter towers to stand in for damaged towers may reduce coverage and thereby limit the availability of service during emergencies. The Commission agrees with CTIA that reducing the maximum tower height could undermine the intended purpose of the exemption. Further, the proposed limit of less than 200 feet will allow appropriate flexibility for taller temporary models, as they become available.

56. The Commission concludes that 60 days is an appropriate time limit for the deployment of towers under this exemption. This time limit has substantial support in the record, and the Commission finds that 60 days strikes the proper balance between making this exemption a useful and effective tool for facilitating urgently needed short term communications deployments and facilitating public involvement in Commission decisions that may affect the environment. The brief duration of the covered deployments renders post-construction notification unnecessary in the public interest because the deployment will be removed by the time a post-construction notice period is complete or shortly thereafter. As the intended deployment period grows, however, the applicability of that reasoning erodes. For emergency deployments that may last up to six months or even longer, post-

construction notice will generally be warranted, as the Commission has indicated previously. Thus, the Commission finds that the existing procedure—*i.e.,* site-specific waivers that are generally conditioned on post-construction notice—remains appropriate for emergency towers that will be deployed for longer periods than those covered by the narrow exemption the Commission establishes in this proceeding.

57. The Commission declines to define consequences or to adopt special enforcement mechanisms for misuse of the exemption, as proposed by some commenters. The Commission agrees with Springfield, however, that the Commission should adopt a measure to prevent the use of consecutive deployments under the exemption to effectively exceed the time limit. The Commission therefore requires that at least 30 days must pass following the removal of one exempted temporary tower before the same applicant may rely on the exemption for another temporary tower covering substantially the same service area. While AT&T argues that the Commission should not adopt measures to prevent ''speculative abuses,'' the Commission concludes that this narrow limitation on the consecutive use of the exemption will help to ensure that it applies only to deployments of brief duration, as intended. Further, the Commission is not persuaded by CTIA's argument that such a restriction would interfere with a carrier's flexibility to respond to unforeseen events. The restriction places no limit on the number of exempt towers that can be deployed at any one time to cover a larger combined service area. The Commission also notes that its rule provides for extensions of the 60-day period in appropriate cases, which should further ensure that applicants have sufficient flexibility to respond to unforeseen events.

58. The Commission further clarifies that under appropriate conditions, such as natural disasters or national emergencies, the relevant bureau may grant waivers of this limitation applicable to defined geographic regions and periods. In addition, a party subject to this limitation at a particular site may still request a site-specific waiver of the notice requirements for a subsequent temporary deployment at that site.

59. To implement the new temporary towers exemption, Commission staff will modify FCC Form 854. The Commission notes that the modification of the form is subject to approval by the Office of Management and Budget (OMB). To ensure clarity, the Commission provides that the exemption will take effect only when the Wireless Telecommunications Bureau issues a Public Notice announcing OMB's approval. The Commission further provides that, until the new exemption is effective, the interim waiver of notification requirements for temporary towers remains available.

III. Implementation of Section 6409(a)

A. Background

60. Congress adopted section 6409 in 2012 as a provision of Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, which is more commonly known as the Spectrum Act. Section 6409(a), entitled ''Facility Modifications,'' has three provisions. Subsection (a)(1) provides that ''[n]otwithstanding section 704 of the Telecommunications Act of 1996 [codified as 47 U.S.C. 332(c)(7)] or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.'' Subsection (a)(2) defines the term ''eligible facilities request'' as any request for modification of an existing wireless tower or base station that involves (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment. Subsection (a)(3) provides that ''[n]othing in paragraph (a) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.'' Aside from the definition of ''eligible facilities request,'' section 6409(a) does not define any of its terms. Similarly, neither the definitional section of the Spectrum Act nor that of the Communications Act contains definitions of the section 6409(a) terms. In the *Infrastructure NPRM,* the Commission sought comment on whether to address the provision more conclusively and comprehensively. The Commission found that it would serve the public interest to seek comment on implementing rules to define terms that the provision left undefined, and to fill in other interstices that may serve to delay the intended benefits of section 6409(a).

B. Discussion

61. After reviewing the voluminous record in this proceeding, the Commission decides to adopt rules clarifying the requirements of section 6409(a), and implementing and enforcing these requirements, in order to prevent delay and confusion in such implementation. As the Commission noted in the *Infrastructure NPRM,* collocation on existing structures is often the most efficient and economical solution for mobile wireless service providers that need new cell sites to expand their existing coverage area, increase their capacity, or deploy new advanced services. The Commission agrees with industry commenters that clarifying the terms in section 6409 will eliminate ambiguities in interpretation and thus facilitate the zoning process for collocations and other modifications to existing towers and base stations. Although these issues could be addressed over time through judicial decisions, the Commission concludes that addressing them now in a comprehensive and uniform manner will ensure that the numerous and significant disagreements over the provision do not delay its intended benefits.

62. The record demonstrates very substantial differences in the views advanced by local government and wireless industry commenters on a wide range of interpretive issues under the provision. While many localities recommend that the Commission defer to best practices to be developed on a collaborative basis, the Commission finds that there has been little progress in that effort since enactment of section 6409(a) well over two years ago. While the Commission generally encourages the development of voluntary best practices, the Commission is also concerned that voluntary best practices, on their own, may not effectively resolve many of the interpretive disputes or ensure uniform application of the law in this instance. In light of these disputes, the Commission takes this opportunity to provide additional certainty to parties.

63. *Authority.* The Commission finds that it has authority under section 6003 of the Spectrum Act to adopt rules to clarify the terms in section 6409(a) and to establish procedures for effectuating its requirements. The Commission also has broad authority to ''take any action necessary to assist [FirstNet] in effectuating its duties and responsibilities'' to construct and operate a nationwide public safety broadband network. The rules the Commission adopts reflect the authority conferred by these provisions, as they will facilitate and expedite infrastructure deployment in qualifying cases and thus advance wireless broadband deployment by commercial entities as well as FirstNet.

1. Definition of Terms in Section 6409(a)

a. Scope of Covered Services

64. The Commission first addresses the scope of wireless services to which the provision applies through the definitions of both ''transmission equipment'' and ''wireless tower or base station.'' After considering the arguments in the record, the Commission concludes that section 6409(a) applies both to towers and base stations and to transmission equipment used in connection with any Commission-authorized wireless communications service. The Commission finds strong support in the record for this interpretation. With respect to towers and base stations, the Commission concludes that this interpretation is warranted given Congress's selection of the broader term ''wireless'' in section 6409(a) rather than the narrow term ''personal wireless service'' it previously used in section 332(c)(7), as well as Congress's express intent that the provisions of the Spectrum Act ''advance wireless broadband service,'' promoting ''billions of dollars in private investment,'' and further the deployment of FirstNet. The Commission finds that interpreting ''wireless'' in the narrow manner that some municipal commenters suggest would substantially undermine the goal of advancing the deployment of broadband facilities and services, and that interpreting section 6409(a) to facilitate collocation opportunities on a broad range of suitable structures will far better contribute to meeting these goals, and is particularly important to further the deployment of FirstNet. The Spectrum Act directs the FirstNet authority, in carrying out its duty to deploy and operate a nationwide public safety broadband network, to ''enter into agreements to utilize, to the maximum extent economically desirable, existing . . . commercial or other communications infrastructure; and . . . Federal, State, tribal, or local infrastructure.'' For all of these reasons, the Commission finds it appropriate to interpret section 6409(a) as applying to collocations on infrastructure that supports equipment used for all Commission-licensed or authorized wireless transmissions.

65. The Commission is not persuaded that Congress's use of the term ''base station'' implies that the provision applies only to mobile service. As noted in the *Infrastructure NPRM,* the Commission's rules define ''base station'' as a feature of a mobile communications network, and the term has commonly been used in that context. It is important, however, to interpret ''base station'' in the context of Congress's intention to advance wireless broadband service generally, including both mobile and fixed broadband services. The Commission notes, for example, that the Spectrum Act directs the Commission to license the new commercial wireless services employing H Block, AWS–3, and repurposed television broadcast spectrum under ''flexible-use service rules''—*i.e.,* for fixed as well as mobile use. Moreover, in the context of wireless broadband service generally, the term ''base station'' describes fixed stations that provide fixed wireless service to users as well as those that provide mobile wireless service. Indeed, this is particularly true with regard to Long Term Evolution (LTE), in which base stations can support both fixed and mobile service. The Commission finds that, in the context of section 6409(a), the term ''base station'' encompasses both mobile and fixed services.

66. The Commission is also not persuaded that it should exclude ''broadcast'' from the scope of section 6409(a), both with respect to ''wireless'' towers and base stations and with respect to transmission equipment. The Commission acknowledges that the term ''wireless providers'' appears in other sections of the Spectrum Act that do not encompass broadcast services. The Commission does not agree, however, that use of the word ''wireless'' in section 6409's reference to a ''tower or base station'' can be understood without reference to context. The Commission interprets the term ''wireless'' as used in section 6409(a) in light of the purpose of this provision in particular and the larger purposes of the Spectrum Act as a whole. The Commission finds that Congress intended the provision to facilitate collocation in order to advance the deployment of commercial and public safety broadband services, including the deployment of the FirstNet network. The Commission agrees with NAB that including broadcast towers significantly advances this purpose by ''supporting the approximately 25,000 broadcast towers as collocation platforms.'' The Commission notes that a variety of industry and municipal commenters likewise support the inclusion of broadcast towers for similar reasons. Finally, the Commission observes that this approach is consistent with the Collocation Agreement and the NPA, both of which define ''tower'' to include broadcast towers. These agreements address ''wireless'' communications facilities and collocation for any ''communications'' purposes. They extend to any ''tower'' built for the sole or primary purpose of supporting any ''FCC-licensed'' facilities. The Commission finds these references particularly persuasive in ascertaining congressional intent, since section 6409(a) expressly references the Commission's continuing obligations to comply with NEPA and NHPA, which form the basis for these agreements.

67. The Commission further concludes that a broad interpretation of ''transmission equipment'' is similarly appropriate in light of the purposes of section 6409(a) in particular and the Spectrum Act more generally. The statute's Conference Report expresses Congress's intention to advance wireless broadband service generally, and as PCIA states, a broad definition of this term will ensure coverage for all wireless broadband services, including future services not yet contemplated. Defining ''transmission equipment'' broadly will facilitate the deployment of wireless broadband networks and will ''minimize the need to continually redefine the term as technology and applications evolve.'' The Commission also notes that a broad definition reflects Congress's definition of a comparable term in the context of directly related provisions in the same statute; in section 6408, the immediately preceding provision addressing uses of adjacent spectrum, Congress defined the term ''transmission system'' broadly to include ''any telecommunications, broadcast, satellite, commercial mobile service, or other communications system that employs radio spectrum.''

68. The Commission disagrees with commenters who contend that including broadcast equipment within covered transmission equipment does not advance the goals of the Spectrum Act. While broadcast equipment does not itself transmit wireless broadband signals, its efficient collocation pursuant to section 6409(a) will expedite and minimize the costs of the relocation of broadcast television licensees that are reassigned to new channels in order to clear the spectrum that will be offered for broadband services through the incentive auction, as mandated by the Spectrum Act. The Commission concludes that inclusion of broadcast service equipment in the scope of transmission equipment covered by the provision furthers the goals of the legislation and will contribute in particular to the success of the post-incentive auction transition of television broadcast stations to their new channels. The Commission notes that the language of section 6409(a) is broader than that used in section

332(c)(7), and it is reasonable to construe it in a manner that does not differentiate among various Commission-regulated services, particularly in the context of mandating approval of facilities that do not result in any substantial increase in physical dimensions.

69. The Commission further rejects arguments that Congress intended these terms to be restricted to equipment used in connection with personal wireless services and public safety services. The Communications Act and the Spectrum Act already define those narrower terms, and Congress chose not to employ them in section 6409(a), determining instead to use the broader term, ''wireless.'' The legislative history supports the conclusion that Congress intended to employ broader language. In the Conference Report, Congress emphasized that a primary goal of the Spectrum Act was to ''advance wireless broadband service,'' which would ''promot[e] billions of dollars in private investment, and creat[e] tens of thousands of jobs.'' In light of its clear intent to advance wireless broadband deployment through enactment of section 6409(a), the Commission finds it implausible that Congress meant to exclude facilities used for such services.

b. Transmission Equipment

70. The Commission adopts the proposal in the *Infrastructure NPRM* to define ''transmission equipment'' to encompass antennas and other equipment associated with and necessary to their operation, including power supply cables and backup power equipment. The Commission finds that this definition reflects Congress's intent to facilitate the review of collocations and minor modifications, and it recognizes that Congress used the broad term ''transmission equipment'' without qualifications that would logically limit its scope.

71. The Commission is further persuaded by wireless industry commenters that power supplies, including backup power, are a critical component of wireless broadband deployment and that they are necessary to ensure network resiliency. Indeed, including backup power equipment within the scope of ''transmission equipment'' under section 6409(a) is consistent with Congress's directive to the FirstNet Authority to ''ensure the . . . resiliency of the network.'' Tempe's assertion that backup power is not technically ''necessary'' because transmission equipment can operate without it is unpersuasive. Backup power is certainly necessary to operations during those periods when primary power is intermittent or unavailable. The Commission also concludes that ''transmission equipment'' should be interpreted consistent with the term ''antenna'' in the NPA and, given that the NPA term encompasses ''power sources'' without limitation, the Commission finds that ''transmission equipment'' includes backup power sources. Finally, while the Commission recognizes the concerns raised by local government commenters regarding the potential hazards of backup power generators, the Commission finds that these concerns are fully addressed in the standards applicable to collocation applications discussed below.

72. The Commission defines ''transmission equipment'' under section 6409(a) as any equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply. This definition includes equipment used in any technological configuration associated with any Commission-authorized wireless transmission, licensed or unlicensed, terrestrial or satellite, including commercial mobile, private mobile, broadcast, and public safety services, as well as fixed wireless services such as microwave backhaul or fixed broadband.

c. Existing Wireless Tower or Base Station

73. The Commission adopts the definitions of ''tower'' and ''base station'' proposed in the *Infrastructure NPRM* with certain modifications and clarifications, in order to give independent meaning to both of these statutory terms, and consistent with Congress's intent to promote the deployment of wireless broadband services. First, the Commission concludes that the term ''tower'' is intended to reflect the meaning of that term as it is used in the Collocation Agreement. The Commission defines ''tower'' to include any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities.

74. As proposed in the *Infrastructure NPRM,* the Commission interprets ''base station'' to extend the scope of the provision to certain support structures other than towers. Specifically, the Commission defines that term as the equipment and non-tower supporting structure at a fixed location that enable Commission-licensed or authorized wireless communications between user equipment and a communications network. The Commission finds that the term includes any equipment associated with wireless communications service including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supply, and comparable equipment. The Commission notes that this definition reflects the types of equipment included in its definition of ''transmission equipment,'' and that the record generally supports this approach. For example, DC argues that the Commission should define a base station as ''generally consist[ing] of radio transceivers, antennae, coaxial cable, a regular and backup power supply, and other associated electronics.'' TIA concurs that the term ''base station'' encompasses transmission equipment, including antennas, transceivers, and other equipment associated with and necessary to their operation, including coaxial cable and regular and backup power equipment.

75. The Commission further finds, consistent with the Commission's proposal, that the term ''existing . . . base station'' includes a structure that, at the time of the application, supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a ''base station'' as defined above, even if the structure was not built for the sole or primary purpose of providing such support. As the Commission noted in the *Infrastructure NPRM,* while ''tower'' is defined in the Collocation Agreement and the NPA to include only those structures built for the sole or primary purpose of supporting wireless communications equipment, the term ''base station'' is not used in these agreements. The Commission rejects the proposal to define a ''base station'' to include any structure that is merely capable of supporting wireless transmission equipment, whether or not it is providing such support at the time of the application. The Commission agrees with municipalities' comments that by using the term ''existing,'' section 6409(a) preserves local government authority to initially determine what types of structures are appropriate for supporting wireless transmission equipment if the structures were not built (and thus were not previously approved) for the sole or primary purpose of supporting such equipment. Some wireless industry commenters also support its interpretation that,

while a tower that was built for the primary purpose of housing or supporting communications facilities should be considered ''existing'' even if it does not currently host wireless equipment, other structures should be considered ''existing'' only if they support or house wireless equipment at the time the application is filed.

76. The Commission finds that the alternative definitions proposed by many municipalities are unpersuasive. First, the Commission rejects arguments that a ''base station'' includes only the transmission system equipment, not the structure that supports it. This reading conflicts with the full text of the provision, which plainly contemplates collocations on a base station as well as a tower. Section 6409(a) defines an ''eligible facilities request'' as a request to modify an existing wireless tower or *base station* by collocating on it (among other modifications). This statutory structure precludes the Commission from limiting the term ''base station'' to transmission equipment; collocating on base stations, which the statute envisions, would be conceptually impossible unless the structure is part of the definition as well. The Commission further disagrees that defining ''base station'' to include supporting structures will deprive ''tower'' of all independent meaning. The Commission interprets ''base station'' not to include wireless deployments on towers. Further, the Commission interprets ''tower'' to include all structures built for the sole or primary purpose of supporting Commission-licensed or authorized antennas, and their associated facilities, regardless of whether they currently support base station equipment at the time the application is filed. Thus, ''tower'' denotes a structure that is covered under section 6409(a) by virtue of its construction. In contrast, a ''base station'' includes a structure that is not a wireless tower only where it already supports or houses such equipment.

77. The Commission is also not persuaded by arguments that ''base station'' refers only to the equipment compound associated with a tower and the equipment located upon it. First, no commenters presented evidence that ''base station'' is more commonly understood to mean an equipment compound as opposed to the broader definition of all equipment associated with transmission and reception and its supporting structures. Furthermore, the Collocation Agreement's definition of ''tower,'' which the Commission adopts in the R&O, treats equipment compounds as part of the associated towers for purposes of collocations; if towers include their equipment compounds, then defining base stations as equipment compounds alone would render the term superfluous. The Commission also notes that none of the State statutes and regulations implementing section 6409(a) has limited its scope to equipment and structures associated with towers. In addition, the Commission agrees with commenters who argue that limiting the definition of ''base station'' (and thus the scope of section 6409(a)) to structures and equipment associated with towers would compromise the core policy goal of bringing greater efficiency to the process for collocations. Other structures are increasingly important to the deployment of wireless communications infrastructure; omitting them from the scope of section 6409(a) would mean the statute's efficiencies would not extend to many if not most wireless collocations, and would counterproductively exclude virtually all of the small cell collocations that have the least impact on local land use.

78. Some commenters arguing that section 6409(a) covers no structures other than those associated with towers point to the Conference Report, which, in describing the equivalent provision in the House bill, states that the provision ''would require approval of requests for modification of cell towers.'' The Commission does not find this ambiguous statement sufficient to overcome the language of the statute as enacted, which refers to ''modification of an existing wireless tower *or base station.''* Moreover, this statement from the report does not expressly state a limitation on the provision, and thus may reasonably be read as a simplified reference to towers as an important application of its mandate. The Commission does not view this language as indicating Congress's intention that the provision encompasses only modifications of structures that qualify as wireless towers.

79. The Commission thus adopts the proposed definition of ''base station'' to include a structure that currently supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station at the time the application is filed. The Commission also finds that ''base station'' encompasses the relevant equipment in any technological configuration, including DAS and small cells. The Commission disagrees with municipalities that argue that ''base station'' should not include DAS or small cells. As the record supports, there is no statutory language limiting the term ''base station'' in this manner. The definition is sufficiently flexible to encompass, as appropriate to section 6409(a)'s intent and purpose, future as well as current base station technologies and technological configurations, using either licensed or unlicensed spectrum.

80. While the Commission does not accept municipal arguments to limit section 6409(a) to equipment or structures associated with towers, the Commission rejects industry arguments that section 6409(a) should apply more broadly to include certain structures that neither were built for the purpose of housing wireless equipment nor have base station equipment deployed upon them. The Commission finds no persuasive basis to interpret the statutory provision so broadly. The Commission agrees with Alexandria et al. that the scope of section 6409(a) is different from that of the Collocation Agreement, as the statutory provision clearly applies only to collocations on an existing ''wireless tower or base station'' rather than any existing ''tower or structure.'' Further, interpreting ''tower'' to include structures ''similar to a tower'' would be contrary to the very Collocation Agreement to which these commenters point, which defines ''tower'' in the narrower fashion that the Commission adopts. The Commission also agrees with municipalities as a policy matter that local governments should retain authority to make the initial determination (subject to the constraints of section 332(c)(7)) of which non-tower structures are appropriate for supporting wireless transmission equipment; its interpretations of ''tower'' and ''base station'' preserve that authority.

81. Finally, the Commission agrees with Fairfax that the term ''existing'' requires that wireless towers or base stations have been reviewed and approved under the applicable local zoning or siting process or that the deployment of existing transmission equipment on the structure received another form of affirmative State or local regulatory approval (*e.g.,* authorization from a State public utility commission). Thus, if a tower or base station was constructed or deployed without proper review, was not required to undergo siting review, or does not support transmission equipment that received another form of affirmative State or local regulatory approval; the governing authority is not obligated to grant a collocation application under section 6409(a). The Commission further clarifies that a wireless tower that does not have a permit because it was not in a zoned area when it was built, but was lawfully constructed, is an ''existing'' tower. The Commission finds that its

interpretation of ''existing'' is consistent with the purposes of section 6409(a) to facilitate deployments that are unlikely to conflict with local land use policies and preserve State and local authority to review proposals that may have impacts. First, it ensures that a facility that was deployed unlawfully does not trigger a municipality's obligation to approve modification requests under section 6409(a). Further, it guarantees that the structure has already been the subject of State or local review. This interpretation should also minimize incentives for governing authorities to increase zoning or other regulatory review in cases where minimally intrusive deployments are currently permitted without review. For example, under this interpretation, a homeowner's deployment of a femtocell that is not subject to any zoning or other regulatory requirements will not constitute a base station deployment that triggers obligations to allow deployments of other types of facilities at that location under section 6409(a). By thus preserving State and local authority to review the first base station deployment that brings any non-tower structure within the scope of section 6409(a), the Commission ensures that subsequent collocations of additional transmission equipment on that structure will be consistent with congressional intent that deployments subject to section 6409(a) will not pose a threat of harm to local land use values.

82. On balance, the Commission finds that the foregoing definitions are consistent with congressional intent to foster collocation on various types of structures, while addressing municipalities' valid interest in preserving their authority to determine which structures are suitable for wireless deployment, and under what conditions.

d. Collocation, Replacement, Removal, Modification

83. The Commission concludes again that it is appropriate to look to the Collocation Agreement for guidance on the meaning of analogous terms, particularly in light of section 6409(a)(3)'s specific recognition of the Commission's obligations under NHPA and NEPA. As proposed in the *Infrastructure NPRM* and supported by the record, the Commission concludes that the definition of ''collocation'' for purposes of section 6409(a) should be consistent with its definition in the Collocation Agreement. The Commission defines ''collocation'' under section 6409(a) as ''the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.'' The term ''eligible support structure'' means any structure that falls within the definitions of ''tower'' or ''base station.'' Consistent with the language of section 6409(a)(2)(A)–(C), the Commission also finds that a ''modification'' of a ''wireless tower or base station'' includes collocation, removal, or replacement of an antenna or any other transmission equipment associated with the supporting structure.

84. The Commission disagrees with municipal commenters who argue that collocations are limited to mounting equipment on structures that already have transmission equipment on them. That limitation is not consistent with the Collocation Agreement's definition of ''collocation,'' and would not serve any reasonable purpose as applied to towers built for the purpose of supporting transmission equipment. Nevertheless, the Commission observes that the Commission's approach leads to the same result in the case of ''base stations;'' since its definition of that term includes only structures that already support or house base station equipment, section 6409(a) will not apply to the first deployment of transmission equipment on such structures. Thus, the Commission disagrees with CA Local Governments that adopting the Commission's proposed definition of collocation would require local governments to approve deployments on anything that could house or support a component of a base station. Rather, section 6409(a) will apply only where a State or local government has approved the construction of a structure with the sole or primary purpose of supporting covered transmission equipment (*i.e.,* a wireless tower) or, with regard to other support structures, where the State or local government has previously approved the siting of transmission equipment that is part of a base station on that structure. In both cases, the State or local government must decide that the site is suitable for wireless facility deployment before section 6409(a) will apply.

85. The Commission finds that the term ''eligible facilities request'' encompasses hardening through structural enhancement where such hardening is necessary for a covered collocation, replacement, or removal of transmission equipment, but does not include replacement of the underlying structure. The Commission notes that the term ''eligible facilities request'' encompasses any ''modification of an existing wireless tower or base station that involves'' collocation, removal, or replacement of transmission equipment. Given that structural enhancement of the support structure is a modification of the relevant tower or base station, the Commission notes that permitting structural enhancement as a part of a covered request may be particularly important to ensure that the relevant infrastructure will be available for use by FirstNet because of its obligation to ''ensure the safety, security, and resiliency of the [public safety broadband] network. . . .'' In addition to hardening for Public Safety, commercial providers may seek structural enhancement for many reasons, for example, to increase load capacity or to repair defects due to corrosion or other damage. The Commission finds that such modification is part of an eligible facilities request so long as the modification of the underlying support structure is performed in connection with and is necessary to support a collocation, removal, or replacement of transmission equipment. The Commission further clarifies that, to be covered under section 6409(a), any such structural enhancement must not constitute a substantial change as defined below.

86. The Commission agrees with Alexandria et al., that ''replacement,'' as used in section 6409(a)(2)(C), relates only to the replacement of ''transmission equipment,'' and that such equipment does not include the structure on which the equipment is located. Even under the condition that it would not substantially change the physical dimensions of the structure, replacement of an entire structure may affect or implicate local land use values differently than the addition, removal, or replacement of transmission equipment, and the Commission finds no textual support for the conclusion that Congress intended to extend mandatory approval to new structures. Thus, the Commission declines to interpret ''eligible facilities requests'' to include replacement of the underlying structure.

e. Substantial Change and Other Conditions and Limitations

87. After careful review of the record, the Commission adopts an objective standard for determining when a proposed modification will ''substantially change the physical dimensions'' of an existing tower or base station. The Commission provides that a modification substantially changes the physical dimensions of a tower or base station if it meets any of the following criteria: (1) for towers

outside of public rights-of-way, it increases the height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for those towers in the rights-of-way and for all base stations, it increases the height of the tower or base station by more than 10% or 10 feet, whichever is greater; (2) for towers outside of public rights-of-way, it protrudes from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for those towers in the rights-of-way and for all base stations, it protrudes from the edge of the structure more than six feet; (3) it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; (4) it entails any excavation or deployment outside the current site of the tower or base station; (5) it would defeat the existing concealment elements of the tower or base station; or (6) it does not comply with conditions associated with the prior approval of construction or modification of the tower or base station unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding ''substantial change'' thresholds identified above. The Commission further provides that the changes in height resulting from a modification should be measured from the original support structure in cases where the deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act. Beyond these standards for what constitutes a substantial change in the physical dimensions of a tower or base station, the Commission further provides that for applications covered by section 6409(a), States and localities may continue to enforce and condition approval on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.

88. The Commission initially concludes that it should adopt a test that is defined by specific, objective factors rather than the contextual and entirely subjective standard advocated by the Intergovernmental Advisory Committee (IAC) and municipalities. Congress took care to refer, in excluding certain modifications from mandatory approval requirements, to those that would substantially change the tower or base station's ''physical dimensions.'' The Commission also finds that Congress intended approval of covered requests to occur in a timely fashion. While the Commission acknowledges that the IAC approach would provide municipalities with maximum flexibility to consider potential effects, the Commission is concerned that it would invite lengthy review processes that conflict with Congress's intent. Indeed, some municipal commenters anticipate their review of covered requests under a subjective case-by-case approach could take even longer than their review of collocations absent section 6409(a). The Commission also anticipates that disputes arising from a subjective approach would tend to require longer and more costly litigation to resolve given the more fact-intensive nature of the IAC's open-ended and context-specific approach. The Commission finds that an objective definition, by contrast, will provide an appropriate balance between municipal flexibility and the rapid deployment of covered facilities. The Commission finds further support for this approach in State statutes that have implemented section 6409(a), all of which establish objective standards.

89. The Commission further finds that the objective test for ''substantial increase in size'' under the Collocation Agreement should inform its consideration of the factors to consider when assessing a ''substantial change in physical dimensions.'' This reflects its general determination that definitions in the Collocation Agreement and NPA should inform its interpretation of similar terms in section 6409(a). Further, as noted in the *Infrastructure NPRM,* the Commission has previously relied on the Collocation Agreement's test in comparable circumstances, concluding in the *2009 Declaratory Ruling* that collocation applications are subject to a shorter shot clock under section 332(c)(7) to the extent that they do not constitute a ''substantial increase in size of the underlying structure.'' The Commission has also applied a similar objective test to determine whether a modification of an existing registered tower requires public notice for purposes of environmental review. The Commission notes that some municipalities support this approach, and the Commission further observes that the overwhelming majority of State collocation statutes adopted since the passage of the Spectrum Act have adopted objective criteria similar to the Collocation Agreement test for identifying collocations subject to mandatory approval. The Commission notes as well that there is nothing in the record indicating that any of these objective State-law tests have resulted in objectionable collocations that might have been rejected under a more subjective approach. The Commission is persuaded that it is reasonable to look to the Collocation Agreement test as a starting point in interpreting the very similar ''substantial change'' standard under section 6409(a). The Commission further decides to modify and supplement the factors to establish an appropriate balance between promoting rapid wireless facility deployment and preserving States' and localities' ability to manage and protect local land-use interests.

90. First, the Commission declines to adopt the Collocation Agreement's exceptions that allow modifications to exceed the usual height and width limits when necessary to avoid interference or shelter the antennas from inclement weather. The Commission agrees with CA Local Governments that these issues pose technically complex and fact-intensive questions that many local governments cannot resolve without the aid of technical experts; modifications that would not fit within the Collocation Agreement's height and width exceptions are thus not suitable for expedited review under section 6409(a).

91. Second, the Commission concludes that the limit on height and width increases should depend on the type and location of the underlying structure. Under the Collocation Agreement's ''substantial increase in size'' test, which applies only to towers, a collocation constitutes a substantial increase in size if it would increase a tower's height by 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater. In addition, the Collocation Agreement authorizes collocations that would protrude by twenty feet, or by the width of the tower structure at the level of the appurtenance, whichever is greater. The Commission finds that the Collocation Agreement's height and width criteria are generally suitable for towers, as was contemplated by the Agreement.

92. These tests were not designed with non-tower structures in mind, and the Commission finds that they may often fail to identify substantial changes to non-tower structures such as

buildings or poles, particularly insofar as they would permit height and width increases of 20 feet under all circumstances. Instead, considering the proposals and arguments in the record and the purposes of the provision, the Commission concludes that a modification to a non-tower structure that would increase the structure's height by more than 10% or 10 feet, whichever is greater, constitutes a substantial change under section 6409(a). Permitting increases of up to 10% has significant support in the record. Further, the Commission finds that the adoption of a fixed minimum best serves the intention of Congress to advance broadband service by expediting the deployment of minor modifications of towers and base stations. Without such a minimum, the Commission finds that the test will not properly identify insubstantial increases on small buildings and other short structures, and may undermine the facilitation of collocation, as vertically collocated antennas often need 10 feet of separation and rooftop collocations may need such height as well. Further, the fact that the 10-foot minimum is substantially less than the 20-foot minimum limit under the Collocation Agreement and many State statutes or the 15-foot limit proposed by some commenters provides additional assurance that the Commission's interpretation of what is considered substantial under section 6409(a) is reasonable.

93. The Commission also provides, as suggested by Verizon and PCIA, that a proposed modification of a non-tower structure constitutes a ''substantial change'' under section 6409(a) if it would protrude from the edge of the structure more than six feet. The Commission finds that allowing for width increases up to six feet will promote the deployment of small facility deployments by accommodating installation of the mounting brackets/arms often used to deploy such facilities on non-tower structures, and that it is consistent with small facility deployments that municipalities have approved on such structures. The Commission further notes that it is significantly less than the limits in width established by most State collocation statutes adopted since the Spectrum Act. The Commission finds that six feet is the appropriate objective standard for substantial changes in width for non-tower structures, rather than the alternative proposals in the record.

94. The Commission declines to apply the same substantial change criteria to utility structures as apply to towers. While Verizon argues in an *ex parte* that this approach is justified because of the ''significant similarities'' between towers and utility structures, its own comments note that in contrast to ''macrocell towers,'' utility structures are ''smaller sites[.]'' Because utility structures are typically much smaller than traditional towers, and because utility structures are often located in easements adjacent to vehicular and pedestrian rights-of-way where extensions are more likely to raise aesthetic, safety, and other issues, the Commission does not find it appropriate to apply to such structures the same substantial change criteria applicable to towers. The Commission further finds that towers in the public rights-of-way should be subject to the more restrictive height and width criteria applicable to non-tower structures rather than the criteria applicable to other towers. The Commission notes that, to deploy DAS and small-cell wireless facilities, carriers and infrastructure providers must often deploy new poles in the rights-of-way. Because these structures are constructed for the sole or primary purpose of supporting Commission-licensed or authorized antennas, they fall under the definition of ''tower.'' They are often identical in size and appearance to utility poles in the area, which do not constitute towers. As a consequence, applying the tower height and width standards to these poles constructed for DAS and small-cell support would mean that two adjacent and nearly identical poles could be subject to very different standards. To ensure consistent treatment of structures in the public rights-of-way, and because of the heightened potential for impact from extensions in such locations, the Commission provides that structures qualifying as towers that are deployed in public rights-of-way will be subject to the same height and width criteria as non-tower structures.

95. The Commission agrees with commenters that its substantial change criteria for changes in height should be applied as limits on cumulative changes; otherwise, a series of permissible small changes could result in an overall change that significantly exceeds the adopted standards. Specifically, the Commission finds that whether a modification constitutes a substantial change must be determined by measuring the change in height from the dimensions of the ''tower or base station'' as originally approved or as of the most recent modification that received local zoning or similar regulatory approval prior to the passage of the Spectrum Act, whichever is greater.

96. The Commission declines to provide that changes in height should always be measured from the original tower or base station dimensions, as suggested by some municipalities. As with the original tower or base station, discretionary approval of subsequent modifications reflects a regulatory determination of the extent to which wireless facilities are appropriate, and under what conditions. At the same time, the Commission declines to adopt industry commenters' proposal always to measure changes from the last approved change or the effective date of the rules. Measuring from the last approved change in all cases would provide no cumulative limit at all. In particular, since the Spectrum Act became law, approval of covered requests has been mandatory and approved changes after that time may not establish an appropriate baseline because they may not reflect a siting authority's judgment that the modified structure is consistent with local land use values. Because it is impractical to require parties, in measuring cumulative impact, to determine whether each pre-existing modification was or was not required by the Spectrum Act, the Commission provides that modifications of an existing tower or base station that occur after the passage of the Spectrum Act will not change the baseline for purposes of measuring substantial change. Consistent with the determination that a tower or base station is not covered by section 6409(a) unless it received such approval, this approach will in all cases limit modifications that are subject to mandatory approval to the same modest increments over what the relevant governing authority has previously deemed compatible with local land use values. The Commission further finds that, for structures where collocations are separated horizontally rather than vertically (such as building rooftops), substantial change is more appropriately measured from the height of the original structure, rather than the height of a previously approved antenna. Thus, for example, the deployment of a 10-foot antenna on a rooftop would not mean that a nearby deployment of a 20-foot antenna would be considered insubstantial.

97. Again drawing on the Collocation Agreement's test, the Commission further provides that a modification is a substantial change if it entails any excavation or deployment outside the current site of the tower or base station. As in the Collocation Agreement, the Commission defines the ''site'' for

towers outside of the public rights-of-way as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. For other towers and all base stations, the Commission further restricts the site to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

98. The Commission also rejects the PCIA and Sprint proposal to expand the Collocation Agreement's fourth prong, as modified by the 2004 NPA, to allow applicants to excavate outside the leased or licensed premises. Under the NPA, certain undertakings are excluded from the section 106 review, including ''construction of a replacement for an existing communications tower and any associated excavation that . . . does not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site.'' The NPA exclusion from section 106 review applies to replacement of ''an existing communications tower.'' In contrast, ''replacement,'' as used in section 6409(a)(2)(C), relates only to the replacement of ''transmission equipment,'' not the replacement of the supporting structures. Thus, the activities covered under section 6409(a) are more nearly analogous to those covered under the Collocation Agreement than under the replacement towers exclusion in the NPA. The Commission agrees with localities comments that any eligible facilities requests that involve excavation outside the premises should be considered a substantial change, as under the fourth prong of the Collocation Agreement's test.

99. Based on its review of the record and various state statutes, the Commission further finds that a modification constitutes a substantial change in physical dimensions under section 6409(a) if the change (1) would defeat the existing concealment elements of the tower or base station, or (2) does not comply with pre-existing conditions associated with the prior approval of construction or modification of the tower or base station. The first of these criteria is widely supported by both wireless industry and municipal commenters, who generally agree that a modification that undermines the concealment elements of a stealth wireless facility, such as painting to match the supporting façade or artificial tree branches, should be considered substantial under section 6409(a). The Commission agrees with commenters that in the context of a modification request related to concealed or ''stealth''-designed facilities—*i.e.,* facilities designed to look like some feature other than a wireless tower or base station—any change that defeats the concealment elements of such facilities would be considered a ''substantial change'' under section 6409(a). Commenters differ on whether any other conditions previously placed on a wireless tower or base station should be considered in determining substantial change under section 6409(a). After consideration, the Commission agrees with municipal commenters that a change is substantial if it violates any condition of approval of construction or modification imposed on the applicable wireless tower or base station, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that does not exceed the corresponding ''substantial change'' thresholds. In other words, modifications qualify for section 6409(a) only if they comply, for example, with conditions regarding fencing, access to the site, drainage, height or width increases that exceed the thresholds the Commission adopted and other conditions of approval placed on the underlying structure. This approach, the Commission finds, properly preserves municipal authority to determine which structures are appropriate for wireless use and under what conditions, and reflects one of the three key priorities identified by the IAC in assessing substantial change.

100. The Commission agrees with PCIA that legal, non-conforming structures should be available for modification under section 6409(a), as long as the modification itself does not ''substantially change'' the physical dimensions of the supporting structure as defined here. The Commission rejects municipal arguments that any modification of an existing wireless tower or base station that has ''legal, non-conforming'' status should be considered a ''substantial change'' to its ''physical dimensions.'' As PCIA argues, the approach urged by municipalities could thwart the purpose of section 6409(a) altogether, as simple changes to local zoning codes could immediately turn existing structures into legal, non-conforming uses unavailable for collocation under the statute. Considering Congress's intent to promote wireless facilities deployment by encouraging collocation on existing structures, and considering the requirement in section 6409(a) that States and municipalities approve covered requests ''[n]otwithstanding . . . any other provision of law,'' the Commission finds the municipal commenters' proposal to be unsupportably restrictive.

101. The record also reflects general consensus that wireless facilities modification under section 6409(a) should remain subject to building codes and other non-discretionary structural and safety codes. As municipal commenters indicate, many local jurisdictions have promulgated code provisions that encourage and promote collocations and replacements through a streamlined approval process, while ensuring that any new facilities comply with building and safety codes and applicable Federal and State regulations. Consistent with that approach on the local level, the Commission finds that Congress did not intend to exempt covered modifications from compliance with generally applicable laws related to public health and safety. The Commission concludes that States and localities may require a covered request to comply with generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety, and that they may condition approval on such compliance. In particular, the Commission clarifies that section 6409(a) does not preclude States and localities from continuing to require compliance with generally applicable health and safety requirements on the placement and operation of backup power sources, including noise control ordinances if any. The Commission further clarifies that eligible facility requests covered by section 6409(a) must still comply with any relevant Federal requirement, including any applicable Commission, FAA, NEPA, or section 106 requirements. The Commission finds that this interpretation is supported in the record, addresses a concern raised by several municipal commenters and the IAC, and is consistent with the express direction in section 6409(a) that the provision is not intended to relieve the Commission from the requirements of NEPA and NHPA.

102. In sum, the Commission finds that the definitions, criteria, and related clarifications it adopts for purposes of section 6409(a) will provide clarity and certainty, reducing delays and litigation, and thereby facilitate the rapid deployment of wireless infrastructure and promote advanced wireless broadband services. At the same time, the Commission concludes that its approach also addresses concerns

voiced by municipal commenters and reflects the priorities identified by the IAC. The Commission concludes that this approach reflects a reasonable interpretation of the language and purposes of section 6409(a) and will serve the public interest.

2. Application Review Process, Including Timeframe for Review

103. As an initial matter, the Commission finds that State or local governments may require parties asserting that proposed facilities modifications are covered under section 6409(a) to file applications, and that these governments may review the applications to determine whether they constitute covered requests. As the Bureau observed in the *Section 6409(a) PN,* the statutory provision requiring a State or local government to approve an ''eligible facilities request'' implies that the relevant government entity may require an applicant to file a request for approval. Further, nothing in the provision indicates that States or local governments must approve requests merely because applicants claim they are covered. Rather, under section 6409(a), only requests that do in fact meet the provision's requirements are entitled to mandatory approval. Therefore, States and local governments must have an opportunity to review applications to determine whether they are covered by section 6409(a), and if not, whether they should in any case be granted.

104. The Commission further concludes that section 6409(a) warrants the imposition of certain requirements with regard to application processing, including a specific timeframe for State or local government review and a limitation on the documentation States and localities may require. While section 6409(a), unlike section 332(c)(7), does not expressly provide for a time limit or other procedural restrictions, the Commission concludes that certain limitations are implicit in the statutory requirement that a State or local government ''may not deny, and shall approve'' covered requests for wireless facility siting. In particular, the Commission concludes that the provision requires not merely approval of covered applications, but approval within a reasonable period of time commensurate with the limited nature of the review, whether or not a particular application is for ''personal wireless service'' facilities covered by section 332(c)(7). With no such limitation, a State or local government could evade its statutory obligation to approve covered applications by simply failing to act on them, or it could impose lengthy and onerous processes not justified by the limited scope of review contemplated by the provision. Such unreasonable delays not only would be inconsistent with the mandate to approve but also would undermine the important benefits that the provision is intended to provide to the economy, competitive wireless broadband deployment, and public safety. The Commission requires that States and localities grant covered requests within a specific time limit and pursuant to other procedures outlined below.

105. The Commission finds substantial support in the record for adopting such requirements. It is clear from the record that there is significant dispute as to whether any time limit applies at all under section 6409(a) and, if so, what that limit is. The Commission also notes that there is already some evidence in the record, albeit anecdotal, of significant delays in the processing of covered requests under this new provision, which may be partly a consequence of the current uncertainty regarding the applicability of any time limit. Because the statutory language does not provide guidance on these requirements, the Commission is concerned that, without clarification, future disputes over the process could significantly delay the benefits associated with the statute's implementation. Moreover, the Commission finds it important that all stakeholders have a clear understanding of when an applicant may seek relief from a State or municipal failure to act under section 6409(a). The Commission finds further support for establishing these process requirements in analogous State statutes, nearly all of which include a timeframe for review.

106. Contrary to the suggestion of municipalities, the Commission disagrees that the Tenth Amendment prevents the Commission from exercising its authority under the Spectrum Act to implement and enforce the limitations imposed thereunder on State and local land use authority. These limitations do not require State or local authorities to review wireless facilities siting applications, but rather preempt them from choosing to exercise such authority under their laws other than in accordance with Federal law—*i.e.,* to deny any covered requests. The Commission therefore adopts the following procedural requirements for processing applications under section 6409(a).

107. First, the Commission provides that in connection with requests asserted to be covered by section 6409(a), State and local governments may only require applicants to provide documentation that is reasonably related to determining whether the request meets the requirements of the provision. The Commission finds that this restriction is appropriate in light of the limited scope of review applicable to such requests and that it will facilitate timely approval of covered requests. At the same time, under this standard, State or local governments have considerable flexibility in determining precisely what information or documentation to require. The Commission agrees with PCIA that States and localities may not require documentation proving the need for the proposed modification or presenting the business case for it. The Commission anticipates that over time, experience and the development of best practices will lead to broad standardization in the kinds of information required. As discussed above, even as to applications covered by section 6409(a), State and local governments may continue to enforce and condition approval on compliance with non-discretionary codes reasonably related to health and safety, including building and structural codes. The Commission finds that municipalities should have flexibility to decide when to require applicants to provide documentation of such compliance, as a single documentation submission may be more efficient than a series of submissions, and municipalities may also choose to integrate such compliance review into the zoning process. Accordingly, the Commission clarifies that this documentation restriction does not prohibit States and local governments from requiring documentation needed to demonstrate compliance with any such applicable codes.

108. In addition to defining acceptable documentation requirements, the Commission establishes a specific and absolute timeframe for State and local processing of eligible facilities requests under section 6409(a). The Commission finds that a 60-day period for review, including review to determine whether an application is complete, is appropriate. In addressing this issue, it is appropriate to consider not only the record support for a time limit on review but also State statutes that facilitate collocation applications. Many of these statutes impose review time limits, thus providing valuable insight into States' views on the appropriate amount of time. Missouri, New Hampshire, and Wisconsin, for example, have determined that 45 days is the maximum amount of time available to a municipality to review applications, while Georgia, North

Carolina, and Pennsylvania have adopted a 90-day review period, including review both for completeness and for approval. Michigan's statute provides that after the application is filed, the locality has 14 days to deem the application complete and an additional 60 days to review. The Commission finds it appropriate to adopt a 60-day time period as the time limit for review of an application under section 6409(a).

109. The Commission finds that a period shorter than the 90-day period applicable to review of collocations under section 332(c)(7) of the Communications Act is warranted to reflect the more restricted scope of review applicable to applications under section 6409(a). The Commission further finds that a 60-day period of review, rather than the 45-day period proposed by many industry commenters, is appropriate to provide municipalities with sufficient time to review applications for compliance with section 6409(a), because the timeframe sets an absolute limit that—in the event of a failure to act—results in a deemed grant. Thus, whereas a municipality may rebut a claim of failure to act under section 332(c)(7) if it can demonstrate that a longer review period was reasonable, that is not the case under section 6409(a). Rather, if an application covered by section 6409(a) has not been approved by a State or local government within 60 days from the date of filing, accounting for any tolling, as described below, the reviewing authority will have violated section 6409(a)'s mandate to approve and not deny the request, and the request will be deemed granted.

110. The Commission further provides that the foregoing section 6409(a) timeframe may be tolled by mutual agreement or in cases where the reviewing State or municipality informs the applicant in a timely manner that the application is incomplete. As with tolling for completeness under section 332(c)(7) (as discussed in the R&O), an initial determination of incompleteness tolls the running of the period only if the State or local government provides notice to the applicant in writing within 30 days of the application's submission. The Commission also requires that any determination of incompleteness must clearly and specifically delineate the missing information in writing, similar to determinations of incompleteness under section 332(c)(7). Further, consistent with the documentation restriction established above, the State or municipality may only specify as missing information and supporting documents that are reasonably related to determining whether the request meets the requirements of section 6409(a).

111. The timeframe for review will begin running again when the applicant makes a supplemental submission, but may be tolled again if the State or local government provides written notice to the applicant within 10 days that the application remains incomplete and specifically delineates which of the deficiencies specified in the original notice of incompleteness have not been addressed. The timeframe for review will be tolled in this circumstance until the applicant supplies the relevant authority with the information delineated. Consistent with determinations of incompleteness under section 332(c)(7) as described below, any second or subsequent determination that an application is incomplete may be based only on the applicant's failure to provide the documentation or information the State or municipality required in its initial request for additional information. Further, if the 10-day period passes without any further notices of incompleteness from the State or locality, the period for review of the application may not thereafter be tolled for incompleteness.

112. The Commission further finds that the timeframe for review under section 6409(a) continues to run regardless of any local moratorium. This is once again consistent with its approach under section 332(c)(7), and is further warranted in light of section 6409(a)'s direction that covered requests shall be approved ''[n]otwithstanding . . . any other provision of law.''

113. Some additional clarification of time periods and deadlines will assist in cases where both section 6409(a) and section 332(c)(7) apply. In particular, the Commission notes that States and municipalities reviewing an application under section 6409(a) will be limited to a restricted application record tailored to the requirements of that provision. As a result, the application may be complete for purposes of section 6409(a) review but may not include all of the information the State or municipality requires to assess applications not subject to section 6409(a). In such cases, if the reviewing State or municipality finds that section 6409(a) does not apply (because, for example, it proposes a substantial change), the Commission provides that the presumptively reasonable timeframe under section 332(c)(7) will start to run from the issuance of the State's or municipality's decision that section 6409(a) does not apply. To the extent the State or municipality needs additional information at that point to assess the application under section 332(c)(7), it may seek additional information subject to the same limitations applicable to other section 332(c)(7) reviews. The Commission recognizes that, in such cases, there might be greater delay in the process than if the State or municipality had been permitted to request the broader documentation in the first place. The Commission finds that applicants are in a position to judge whether to seek approval under section 6409(a), and the Commission expects they will have strong incentives to do so in a reasonable manner to avoid unnecessary delays. Finally, as the Commission proposed in the *Infrastructure NPRM,* the Commission finds that where both section 6409(a) and section 332(c)(7) apply, section 6409(a) governs, consistent with the express language of section 6409(a) providing for approval ''[n]otwithstanding'' section 332(c)(7) and with canons of statutory construction that a more recent statute takes precedence over an earlier one and that ''normally the specific governs the general.''

114. Beyond the guidance provided in the R&O, the Commission declines to adopt the other proposals put forth by commenters regarding procedures for the review of applications under section 6409(a) or the collection of fees. The Commission concludes that its clarification and implementation of this statutory provision strikes the appropriate balance of ensuring the timely processing of these applications and preserving flexibility for State and local governments to exercise their rights and responsibilities. Given the limited record of problems implementing the provision, further action to specify procedures would be premature.

3. Remedies

115. After a careful assessment of the statutory provision and a review of the record, the Commission establishes a deemed granted remedy for cases in which the applicable State or municipal reviewing authority fails to issue a decision within 60 days (subject to any tolling, as described above) on an application submitted pursuant to section 6409(a). The Commission further concludes that a deemed grant does not become effective until the applicant notifies the reviewing jurisdiction in writing, after the time period for review by the State or municipal reviewing authority as prescribed in the Commission's rules has expired, that the application has been deemed granted.

116. The Commission's reading of section 6409(a) supports this approach.

The provision states without equivocation that the reviewing authority ''may not deny, and shall approve'' any qualifying application. This directive leaves no room for a lengthy and discretionary approach to reviewing an application that meets the statutory criteria; once the application meets these criteria, the law forbids the State or local government from denying it. Moreover, while State and local governments retain full authority to approve or deny an application depending on whether it meets the provision's requirements, the statute does not permit them to delay this obligatory and non-discretionary step indefinitely. In the R&O, the Commission defines objectively the statutory criteria for determining whether an application is entitled to a grant under this provision. Given the objective nature of this assessment, then, the Commission concludes that withholding a decision on an application indefinitely, even if an applicant can seek relief in court or in another tribunal, would be tantamount to denying it, in contravention of the statute's pronouncement that reviewing authorities ''may not deny'' qualifying applications. The Commission finds that the text of section 6409(a) supports adoption of a deemed granted remedy, which will directly serve the broader goal of promoting the rapid deployment of wireless infrastructure. The Commission notes as well that its approach is consistent with other Federal agencies' processes to address inaction by State and local authorities.

117. Many municipalities oppose the adoption of a deemed granted remedy primarily on the ground that it arguably represents an intrusion into local decision-making authority. The Commission fully acknowledges and values the important role that local reviewing authorities play in the siting process, and, as the Commission stated in the *Infrastructure NPRM,* ''[the Commission's] goal is not to 'operate as a national zoning board.' '' At the same time, its authority and responsibility to implement and enforce section 6409(a) as if it were a provision of the Communications Act obligate the Commission to ensure effective enforcement of the congressional mandate reflected therein. To do so, given its ''broad grant of rulemaking authority,'' the importance of ensuring rapid deployment of commercial and public safety wireless broadband services as reflected in the adoption of the Spectrum Act, and in light of the record of disputes in this proceeding, as well as the prior experience of the Commission with delays in municipal action on wireless facility siting applications that led to the *2009 Declaratory Ruling,* the Commission concludes it is necessary to balance these federalism concerns against the need for ensuring prompt action on section 6409(a) applications. The Commission adopts this approach in tandem with several measures that safeguard the primacy of State and local government participation in local land use policy, to the extent consistent with the requirements of section 6409(a). First, the Commission has adopted a 60-day time period for States and localities to review applications submitted under section 6409(a). While many industry commenters proposed a 45-day review period based on the non-discretionary analysis that the provision requires, the Commission has provided more time in part to ensure that reviewing authorities have sufficient time to assess the applications.

118. Second, the Commission is establishing a clear process for tolling the 60-day period when an applicant fails to submit a complete application, thus ensuring that the absence of necessary information does not prevent a State or local authority from completing its review before the time period expires.

119. Third, even in the event of a deemed grant, the section 106 historic preservation review process—including coordination with State and Tribal historic preservation officers—will remain in place with respect to any proposed deployments in historic districts or on historic buildings (or districts and buildings eligible for such status).

120. Fourth, a State or local authority may challenge an applicant's written assertion of a deemed grant in any court of competent jurisdiction when it believes the underlying application did not meet the criteria in section 6409(a) for mandatory approval, would not comply with applicable building codes or other non-discretionary structural and safety codes, or for other reasons is not appropriately ''deemed granted.''

121. Finally, and perhaps most importantly, the deemed granted approach does not deprive States and localities of the opportunity to determine whether an application is covered; rather, it provides a remedy for a failure to act within the fixed but substantial time period within which they must determine, on a non-discretionary and objective basis, whether an application fits within the parameters of section 6409(a).

122. The Commission emphasizes as well that it expects deemed grants to be the exception rather than the rule. To the extent there have been any problems or delays due to ambiguity in the provision, the Commission anticipates that the framework it has established, including the specification of substantive and procedural rights and applicable remedies, will address many of these problems. The Commission anticipates as well that the prospect of a deemed grant will create significant incentives for States and municipalities to act in a timely fashion.

123. With respect to the appropriate forum for redress or for resolving disputes, including disputes over the application of the deemed grant rule, the Commission finds that the most appropriate course for a party aggrieved by operation of section 6409(a) is to seek relief from a court of competent jurisdiction. Although the Commission finds that it has authority to resolve such disputes under its authority to implement and enforce that provision, the Commission also finds that requiring that these disputes be resolved in court, and not by the Commission, will better accommodate the role of the States and local authorities and serve the public interest for the reasons the municipal commenters identify and as discussed in the R&O.

124. A number of factors persuade the Commission to require parties to adjudicate claims under section 6409(a) in court rather than before the Commission. First, Commission adjudication would impose significant burdens on localities, many of which are small entities with no representation in Washington, DC and no experience before the Commission. The possible need for testimony to resolve disputed factual issues, which may occur in these cases, would magnify the burden. The Commission is also concerned that it may simply lack the resources to adjudicate these matters in a timely fashion if the Commission enables parties to seek its review of local zoning disputes arising in as many as 38,000 jurisdictions, thus thwarting Congress's goal of speeding up the process. The Commission also agrees with municipalities that it does not have any particular expertise in resolving local zoning disputes, whereas courts have been adjudicating claims of failure to act on wireless facility siting applications since the adoption of section 332(c)(7).

125. The Commission requires parties to bring claims related to section 6409(a) in a court of competent jurisdiction. Such claims would appear likely to fall into one of three categories. First, if the State or local authority has denied the application, an applicant might seek to challenge that denial. Second, if an

applicant invokes its deemed grant right after the requisite period of State or local authority inaction, that reviewing authority might seek to challenge the deemed grant. Third, an applicant whose application has been deemed granted might seek some form of judicial imprimatur for the grant by filing a request for declaratory judgment or other relief that a court may find appropriate. In light of the policy underlying section 6409(a) to ensure that covered requests are granted promptly, and in the self-interest of the affected parties, the Commission would expect that these parties would seek judicial review of any such claims relating to section 6409(a) expeditiously. The enforcement of such claims is a matter appropriately left to such courts of competent jurisdiction. Given the foregoing Federal interest reflected in section 6409(a), it would appear that the basis for equitable judicial remedies would diminish significantly absent prompt action by the aggrieved party. In its judgment, based on the record established in this proceeding, the Commission finds no reason why (absent a tolling agreement by parties seeking to resolve their differences) such claims cannot and should not be brought within 30 days of the date of the relevant event (*i.e.,* the date of the denial of the application or the date of the notification by the applicant to the State or local authority of a deemed grant in accordance with the Commission's rules).

4. Non-application to States or Municipalities in Their Proprietary Capacities

126. As proposed in the *Infrastructure NPRM* and supported by the record, the Commission concludes that section 6409(a) applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their proprietary capacities. As discussed in the record, courts have consistently recognized that in ''determining whether government contracts are subject to preemption, the case law distinguishes between actions a State entity takes in a proprietary capacity—actions similar to those a private entity might take—and its attempts to regulate.'' As the Supreme Court has explained, ''[i]n the absence of any express or implied implication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and when analogous private conduct would be permitted, this Court will not infer such a restriction.'' Like private property owners, local governments enter into lease and license agreements to allow parties to place antennas and other wireless service facilities on local-government property, and the Commission finds no basis for applying section 6409(a) in those circumstances. The Commission finds that this conclusion is consistent with judicial decisions holding that sections 253 and 332(c)(7) of the Communications Act do not preempt ''non regulatory decisions of a state or locality acting in its proprietary capacity.''

127. The Commission declines at this time to further elaborate as to how this principle should apply to any particular circumstance in connection with section 6409(a). The Commission agrees with Alexandria et al. that the record does not demonstrate a present need to define what actions are and are not proprietary, and the Commission concludes in any case that such a task is best undertaken, to the extent necessary, in the context of a specific municipal action and associated record.

5. Effective Date

128. Based on its review of the record, the Commission is persuaded that a transition period is necessary and appropriate. The Commission agrees with certain municipal commenters that affected State and local governments may need time to make modifications to their laws and procedures to conform to and comply with the rules the Commission adopts in the R&O implementing and enforcing section 6409(a), and that a transition period is warranted to give them time to do so. The Commission concludes as proposed by the IAC and other parties that the rules adopted to implement section 6409(a) will take effect 90 days after **Federal Register** publication.

IV. Section 332(c)(7) and the 2009 Declaratory Ruling

A. Background

129. In 2009, the Commission adopted a Declaratory Ruling in response to a petition requesting clarification on two points: what constitutes a ''reasonable period of time'' after which an aggrieved applicant may file suit asserting a failure to act under section 332(c)(7), and whether a zoning authority may restrict competitive entry by multiple providers in a given area under section 332(c)(7)(B)(i)(II). In the *2009 Declaratory Ruling,* the Commission interpreted a ''reasonable period of time'' under section 332(c)(7)(B)(ii) to be 90 days for processing collocation applications, and 150 days for processing applications other than collocations. The Commission further determined that failure to meet the applicable timeframe presumptively constitutes a failure to act under section 332(c)(7)(B)(v), enabling an applicant to pursue judicial relief within the next 30 days.

130. In the *Infrastructure NPRM,* while stating that it would not generally revisit the *2009 Declaratory Ruling,* the Commission sought comment on six discrete issues arising under section 332(c)(7) and the *2009 Declaratory Ruling:* (1) Whether and how to clarify when a siting application is considered complete for the purpose of triggering the *2009 Declaratory Ruling*'s shot clock; (2) whether to clarify that the presumptively reasonable period for State or local government action on an application runs regardless of any local moratorium; (3) whether the *2009 Declaratory Ruling* applies to DAS and small-cell facilities; (4) whether to clarify the types of actions that constitute ''collocations'' for purposes of triggering the shorter shot clock; (5) whether local ordinances establishing preferences for deployment on municipal property violate section 332(c)(7)(B)(i)(I); and (6) whether to adopt an additional remedy for failures to act in violation of section 332(c)(7).

B. Discussion

1. Completeness of Applications

131. The Commission finds that it should clarify under what conditions the presumptively reasonable timeframes may be tolled on grounds that an application is incomplete. As an initial matter, the Commission notes that under the *2009 Declaratory Ruling,* the presumptively reasonable timeframe begins to run when an application is first submitted, not when it is deemed complete. Accordingly, to the extent municipalities have interpreted the clock to begin running only after a determination of completeness, that interpretation is incorrect.

132. Further, consistent with proposals submitted by Crown Castle and PCIA, the Commission clarifies that, following a submission in response to a determination of incompleteness, any subsequent determination that an application remains incomplete must be based solely on the applicant's failure to supply information that was requested within the first 30 days. The shot clock will begin running again after the applicant makes a supplemental submission. The State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. In other words, a subsequent

determination of incompleteness can result in further tolling of the shot clock only if the local authority provides it to the applicant in writing within 10 days of the supplemental submission, specifically identifying the information the applicant failed to supply in response to the initial request. Once the 10-day period passes, the period for review of the application may not thereafter be tolled for incompleteness.

133. The Commission further provides that, in order to toll the timeframe for review on grounds of incompleteness, a municipality's request for additional information must specify the code provision, ordinance, application instruction, or otherwise publically-stated procedures that require the information to be submitted. This requirement will avoid delays due to uncertainty or disputes over what documents or information are required for a complete application. Further, while some municipal commenters argue that ''[n]ot all jurisdictions codify detailed application submittal requirements because doing so would require a code amendment for even the slightest change,'' the Commission's approach does not restrict them to reliance on codified documentation requirements.

134. Beyond these procedural requirements, the Commission declines to enumerate what constitutes a ''complete'' application. The Commission finds that State and local governments are best suited to decide what information they need to process an application. Differences between jurisdictions make it impractical for the Commission to specify what information should be included in an application.

135. The Commission finds that these clarifications will provide greater certainty regarding the period during which the clock is tolled for incompleteness. This in turn provides clarity regarding the time at which the clock expires, at which point an applicant may bring suit based on a ''failure to act.'' Further, the Commission expects that these clarifications will result in shared expectations among parties, thus limiting potential miscommunication and reducing the potential or need for serial requests for more information. These clarifications will facilitate faster application processing, reduce unreasonable delay, and accelerate wireless infrastructure deployment.

2. Moratoria

136. The Commission clarifies that the shot clock runs regardless of any moratorium. This is consistent with a plain reading of the *2009 Declaratory Ruling,* which specifies the conditions for tolling and makes no provision for moratoria. Moreover, its conclusion that the clock runs regardless of any moratorium means that applicants can challenge moratoria in court when the shot clock expires without State or local government action, which is consistent with the case-by-case approach that courts have generally applied to moratoria under section 332(c)(7). This approach, which establishes clearly that an applicant can seek redress in court even when a jurisdiction has imposed a moratorium, will prevent indefinite and unreasonable delay of an applicant's ability to bring suit.

137. Some commenters contend that this approach would, in effect, improperly require municipal staff to simultaneously review and update their regulations to adapt to new technologies while also reviewing applications. The Commission recognizes that new technologies may in some cases warrant changes in procedures and codes, but finds no reason to conclude that the need for any such change should freeze all applications. The Commission is confident that industry and local governments can work together to resolve applications that may require more staff resources due to complexity, pending changes to the relevant siting regulations, or other special circumstances. Moreover, in those instances in which a moratorium may reasonably prevent a State or municipality from processing an application within the applicable timeframe, the State or municipality will, if the applicant seeks review, have an opportunity to justify the delay in court. The Commission clarifies that the shot clock continues to run regardless of any moratorium.

138. The Commission declines at this time to determine that a moratorium that lasts longer than six months constitutes a *per se* violation of the obligation to take action in a reasonable period of time. Although some have argued that a six-month limit would ''discourage localities from circumventing the intent of the Commission's shot clock rules,'' others disagree, and the record provides insufficient evidence to support a *per se* determination at this juncture. Given its clarification that the presumptively reasonable timeframes apply regardless of moratoria, any moratorium that results in a delay of more than 90 days for a collocation application or 150 days for any other application will be presumptively unreasonable.

3. Application to DAS and Small Cells

139. The Commission clarifies that to the extent DAS or small-cell facilities, including third-party facilities such as neutral host DAS deployments, are or will be used for the provision of personal wireless services, their siting applications are subject to the same presumptively reasonable timeframes that apply to applications related to other personal wireless service facilities. The Commission notes that courts have addressed the issue and, consistent with its conclusion, have found that the timeframes apply to DAS and small-cell deployments.

140. Some commenters argue that the shot clocks should not apply because some providers describe DAS and small-cell deployments as wireline, not wireless, facilities. Determining whether facilities are ''personal wireless service facilities'' subject to section 332(c)(7) does not rest on a provider's characterization in another context; rather, the analysis turns simply on whether they are facilities used to provide personal wireless services. Based on its review of the record, the Commission finds no evidence sufficient to compel the conclusion that the characteristics of DAS and small-cell deployments somehow exclude them from section 332(c)(7) and the *2009 Declaratory Ruling.* For similar reasons, the Commission rejects Coconut Creek's argument that the shot clocks should apply only to neutral host deployments.

141. Some commenters suggest revising the Commission's proposal on the grounds that the unique qualities of DAS and small-cell systems require longer timeframes for municipal review. The Commission declines to adjust the timelines as these commenters suggest. The Commission notes that the timeframes are presumptive, and the Commission expects applicants and State or local governments to agree to extensions in appropriate cases. Moreover, courts will be positioned to assess the facts of individual cases—including whether the applicable time period ''t[ook] into account the nature and scope of [the] request''—in instances where the shot clock expires and the applicant seeks review. The Commission also notes that DAS and small-cell deployments that involve installation of new poles will trigger the 150-day time period for new construction that many municipal commenters view as reasonable for DAS and small-cell applications. The Commission finds it unnecessary to modify the presumptive timeframes as they apply to DAS applications.

4. Definition of Collocation

142. After reviewing the record, the Commission declines to make any changes or clarifications to the existing standard established in the *2009 Declaratory Ruling* for applying the 90-day shot clock for collocations. In particular, the Commission declines to apply the ''substantial change'' test that the Commission establishes in the R&O for purposes of section 6409(a). The Commission observes that sections 6409(a) and 332(c)(7) serve different purposes, and the Commission finds that the tests for ''substantial change'' and ''substantial increase in size'' are appropriately distinct. More specifically, the test for a ''substantial increase in size'' under section 332(c)(7) affects only the length of time for State or local review, while the test the Commission adopts under section 6409(a) identifies when a State or municipality must grant an application. This is a meaningful distinction that merits a more demanding standard under section 6409(a).

143. Considering that these provisions cover different (though overlapping) pools of applications, it is appropriate to apply them differently. Further, the Commission finds no compelling evidence in the record that using the same test for both provisions would provide significant administrative efficiencies or limit confusion, as some have argued. The Commission preserves distinct standards under the two provisions.

5. Preferences for Deployments on Municipal Property

144. The Commission finds insufficient evidence in the record to make a determination that municipal property preferences are *per se* unreasonably discriminatory or otherwise unlawful under section 332(c)(7). To the contrary, most industry and municipal commenters support the conclusion that many such preferences are valid. Consistent with the majority of comments on this issue, the Commission declines at this time to find municipal property preferences per se unlawful under section 332(c)(7).

6. Remedies

145. After reviewing the record, the Commission declines to adopt an additional remedy for State or local government failures to act within the presumptively reasonable time limits. The Commission also notes that a party pursuing a ''failure to act'' claim may ask the reviewing court for an injunction granting the application. Moreover, in the case of a failure to act within the reasonable timeframes set forth in the Commission's rules, and absent some compelling need for additional time to review the application, the Commission believes that it would also be appropriate for the courts to treat such circumstances as significant factors weighing in favor of such relief.

V. Procedural Matters

A. Final Regulatory Flexibility Analysis

146. As required by section 603 of the Regulatory Flexibility Act (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the expected impact on small entities of the requirements adopted in the R&O. To the extent that any statement contained in the FRFA is perceived as creating ambiguity with respect to the Commission's rules, or statements made in the R&O, the rules and R&O statements shall be controlling.

1. Need for, and Objectives of, the Report and Order

147. In the R&O, the Commission takes important steps to promote the deployment of wireless infrastructure, recognizing that it is the physical foundation that supports all wireless communications. The R&O adopts and clarifies rules in four specific areas in an effort to reduce regulatory obstacles and bring efficiency to wireless facility siting and construction. The Commission does this by eliminating unnecessary reviews, thus reducing the burden on State and local jurisdictions and also on industry, including small businesses. In particular, the Commission updates and tailors the manner in which the Commission evaluates the impact of proposed deployments on the environment and historic properties. The Commission also adopts rules to clarify and implement statutory requirements related to State and local government review of infrastructure siting applications, and the Commission adopts an exemption from its environmental public notification process for towers that are in place for only short periods of time. Taken together, these steps will further facilitate the delivery of more wireless capacity in more locations to consumers throughout the United States. Its actions will expedite the deployment of equipment that does not harm the environment or historic properties, as well as recognize the limits on Federal, State, Tribal, and municipal resources available to review those cases that may adversely affect the environment or historic properties.

148. First, the Commission adopts measures to refine its environmental and historic preservation review processes under NEPA and NHPA to account for new wireless technologies, including physically small facilities like those used in DAS networks and small-cell systems that are a fraction of the size of macrocell installations. Among these, the Commission expands an existing categorical exclusion from NEPA review so that it applies not only to collocations on buildings and towers, but also to collocations on other structures like utility poles. The Commission also adopts a new categorical exclusion from NEPA review for some kinds of deployments in utilities or communications rights-of-way. With respect to NHPA, the Commission creates new exclusions from section 106 review to address certain collocations that are currently subject to review only because of the age of the supporting structure. The Commission takes these steps to assure that, as the Commission continues to meet its responsibilities under NEPA and NHPA, the Commission also fulfills its obligation under the Communications Act to ensure that rapid, efficient, and affordable radio communications services are available to all Americans.

149. Second, regarding temporary towers, the Commission adopts a narrow exemption from the Commission's requirement that owners of proposed towers requiring ASR provide 30 days of national and local notice to give members of the public an opportunity to comment on the proposed tower's potential environmental effects. The exemption from notification requirements applies only to proposed temporary towers meeting defined criteria, including limits on the size and duration of the installation, that greatly reduce the likelihood of any significant environmental effects. Allowing licensees to deploy temporary towers meeting these criteria without first having to complete the Commission's environmental notification process will enable them to more effectively respond to emergencies, natural disasters, and other planned and unplanned short-term spikes in demand without undermining the purposes of the notification process. This exemption will ''remove an administrative obstacle to the availability of broadband and other wireless services during major events and unanticipated periods of localized high demand'' where expanded or substitute service is needed quickly.

150. Third, the Commission adopts rules to implement and enforce section 6409(a) of the Spectrum Act. Section 6409(a) provides, in part, that ''a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.'' By requiring timely approval of eligible requests, Congress intended to advance wireless broadband service for both public safety and commercial users. Section 6409(a) includes a number of undefined terms that bear directly on how the provision applies to infrastructure deployments, and the record confirms that there are substantial disputes on a wide range of interpretive issues under the provision. The Commission adopts rules that clarify many of these terms and enforce their requirements, thus advancing Congress's goal of facilitating rapid deployment. These rules will serve the public interest by providing guidance to all stakeholders on their rights and responsibilities under the provision, reducing delays in the review process for wireless infrastructure modifications, and facilitating the rapid deployment of wireless infrastructure and promoting advanced wireless broadband services.

151. Finally, the Commission clarifies issues related to section 332(c)(7) of the Communications Act and the Commission's *2009 Declaratory Ruling.* Among other things, the Commission explains when a siting application is complete so as to trigger the presumptively reasonable timeframes for local and State review of siting applications under the *2009 Declaratory Ruling,* and how the shot clock timeframes apply to local moratoria and DAS or small-cell facilities. These clarifications will eliminate many disputes under section 332(c)(7), provide certainty about timing related to siting applications (including the time at which applicants may seek judicial relief), and preserve State and municipal governments' critical role in the siting application process.

152. Taken together, the actions the Commission takes in the R&O will enable more rapid deployment of vital wireless facilities, delivering broadband and wireless innovations to consumers across the country. At the same time, they will safeguard the environment, preserve historic properties, protect the interest of Tribal Nations in their ancestral lands and cultural legacies, and address municipalities' concerns over impacts to aesthetics and other local values.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

153. No commenters directly responded to the IRFA. Some commenters raised issues of particular relevance to small entities, and the Commission addresses those issues in the FRFA.

3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

154. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

4. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

155. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

156. The R&O adopts rule changes regarding local and Federal regulation of the siting and deployment of communications towers and other wireless facilities. Due to the number and diversity of owners of such infrastructure and other responsible parties, including small entities that are Commission licensees as well as non-licensees, the Commission classifies and quantify them in the remainder of this section.

157. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. The Commission's action may, over time, affect a variety of small entities. To assist in assessing the R&O's effect on these entities, the Commission describes three comprehensive categories—small businesses, small organizations, and small governmental jurisdictions—that encompass entities that could be directly affected by the rules the Commission adopts. As of 2010, there were 27.9 million small businesses in the United States, according to the SBA. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, the Commission estimates that most governmental jurisdictions are small.

158. Wireless Telecommunications Carriers (except satellite). The Census Bureau defines this category as follows: ''This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.'' The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers (except Satellite). In this category, a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. According to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (SMR) telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

159. Personal Radio Services. Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided

for in other services. Personal radio services include services operating in spectrum licensed under part 95 of the Commission's rules. These services include Citizen Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service. There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules the Commission adopts. Since all such entities are wireless, the Commission applies the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons. Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the R&O.

160. Public Safety Radio Services. Public safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities in jurisdictions with populations of less than 50,000 fall within the definition of a small entity.

161. Private Land Mobile Radio. Private Land Mobile Radio (PLMR) systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories that operate and maintain switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The SBA has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. The Commission believes that the most appropriate classification for PLMR is Wireless Communications Carriers (except satellite). The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of PLMR licensees are small entities that may be affected by its action.

162. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and SMR telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

163. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the rules the Commission adopts could potentially impact every small business in the United States.

164. Multiple Address Systems. Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines ''small entity'' for MAS licensees as an entity that has average annual gross revenues of less than $15 million over the three previous calendar years. ''Very small business'' is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than $3 million over the preceding three calendar years. The SBA has approved these definitions. The majority of MAS operators are licensed in bands where the Commission has implemented a geographic area licensing approach that requires the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 Economic Area market area MAS authorizations. The Commission's licensing database indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service. In addition, an auction for 5,104 MAS licenses in 176 EAs was conducted in 2001. Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

165. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The applicable definition of small entity in this instance appears to be the ''Wireless Telecommunications Carriers (except satellite)'' definition under the SBA rules. Under that SBA category, a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 99 or fewer employees and 372 had employment of 100 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by its action.

166. Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems—previously referred to as Multipoint

Distribution Service (MDS) and Multichannel Multipoint Distribution Service systems, and ''wireless cable''—transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average annual gross revenues of no more than $40 million over the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. The Commission previously estimated that of the 61 small business BRS auction winners, based on its review of licensing records, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities; 18 incumbent BRS licensees do not meet the small business size standard. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA's rules or the Commission's rules. In 2009, the Commission conducted Auction 86, which involved the sale of 78 licenses in the BRS areas. The Commission established three small business size standards that were used in Auction 86: (i) An entity with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years was considered a small business; (ii) an entity with attributed average annual gross revenues that exceeded $3 million and did not exceed $15 million for the preceding three years was considered a very small business; and (iii) an entity with attributed average annual gross revenues that did not exceed $3 million for the preceding three years was considered an entrepreneur. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the 10 winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses. The Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service.

167. In addition, the SBA's placement of Cable Television Distribution Services in the category of Wired Telecommunications Carriers is applicable to cable-based educational broadcasting services. Since 2007, Wired Telecommunications Carriers have been defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. Establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA has determined that a business in this category is a small business if it has 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms in this category that operated for the duration of that year. Of those, 3,144 had fewer than 1000 employees, and 44 firms had more than 1000 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small. In addition to Census data, the Commission's Universal Licensing System indicates that as of July 2013, there are 2,236 active EBS licenses. The Commission estimates that of these 2,236 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

168. Location and Monitoring Service (LMS). LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $15 million. A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $3 million. These definitions have been approved by the SBA. An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

169. Television Broadcasting. This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2007 U.S. Census indicates that 2,076 television stations operated in that year. Of that number, 1,515 had annual receipts of $10,000,000 dollars or less, and 561 had annual receipts of more than $10,000,000. Since the Census has no additional classifications on the basis of which to identify the number of stations whose receipts exceeded $38.5 million in that year, the Commission concludes that the majority of television stations were small under the applicable SBA size standard.

170. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial television stations to be 1,387. In addition, according to Commission staff review of the BIA Advisory Services, LLC's *Media Access Pro Television Database* on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less. The Commission estimates that the majority of commercial television broadcasters are small entities.

171. The Commission notes, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Its estimate likely overstates the number of small entities that might be affected by its action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. The estimate of small businesses to which rules may apply does not exclude any television station

from the definition of a small business on this basis and is possibly over-inclusive to that extent.

172. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395. These stations are non-profit, and considered to be small entities.

173. There are also 2,414 LPTV stations, including Class A stations, and 4,046 TV translator stations. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard.

174. Radio Broadcasting. The SBA defines a radio broadcast station as a small business if it has no more than $35.5 million in annual receipts. Business concerns included in this category are those ''primarily engaged in broadcasting aural programs by radio to the public.'' According to review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of November 26, 2013, about 11,331 (or about 99.9 percent) of 11,341 commercial radio stations have revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Commission notes that in assessing whether a business concern qualifies as small under the above definition, revenues from business (control) affiliations must be included. This estimate likely overstates the number of small entities that might be affected, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

175. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. The estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and may be over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it can be difficult to assess this criterion in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

176. FM translator stations and low power FM stations. The rules and clarifications the Commission adopts could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $38.5 million in annual receipts. Currently, there are approximately 6,155 licensed FM translator and booster stations and 864 licensed LPFM stations. Given the nature of these services, the Commission will presume that all of these licensees qualify as small entities under the SBA definition.

177. Multichannel Video Distribution and Data Service (MVDDS). MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years. These definitions were approved by the SBA. On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses. Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.

178. Satellite Telecommunications. Two economic census categories address the satellite industry. Both establish a small business size standard of $32.54 million or less in annual receipts.

179. The first category, ''Satellite Telecommunications,'' ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments operated for that entire year. Of this total, 533 had annual receipts of under $10 million, and 74 establishments had receipts of $10 million or more. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by its action.

180. The second category, ''All Other Telecommunications,'' comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year. Of those, 2,333 operated with annual receipts of less than $10 million and 306 with annual receipts of $10 million or more. Consequently, the Commission estimates that a majority of All Other Telecommunications establishments are small entities that might be affected by its action.

181. Non-Licensee Tower Owners. Although at one time most communications towers were owned by the licensee using the tower to provide communications service, many towers are now owned by third-party businesses that do not provide communications services themselves but lease space on their towers to other companies that provide communications services. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200 feet in height or within the glide slope of an airport must register the tower with the Commission on FCC Form 854. Thus, non-licensee tower owners may be subject to the environmental notification requirements associated with ASR registration, and may benefit from the exemption for certain temporary antenna structures that the Commission adopts in the R&O. In addition, non-licensee tower owners may be affected by its interpretations of section 6409(a) of the Spectrum Act or by its revisions to its interpretation of section 332(c)(7) of the Communications Act.

182. As of September 5, 2014, the ASR database includes approximately 116,643 registration records reflecting a ''Constructed'' status and 13,972 registration records reflecting a ''Granted, Not Constructed'' status. These figures include both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which it can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require ASR registration, the Commission does not collect information as to the number of such towers in use and cannot estimate the number of tower owners that would be subject to the rules the Commission adopts. Moreover, the SBA has not developed a size standard for small businesses in the category ''Tower Owners.'' The Commission is unable to determine the number of non-licensee tower owners that are small entities. The Commission believes that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands, and that nearly all of these qualify as small businesses under the SBA's definition for ''All Other Telecommunications.'' In addition, there may be other non-licensee owners of other wireless infrastructure, including DAS and small cells that might be affected by the regulatory measures the Commission adopts. The Commission does not have any basis for estimating the number of such non-licensee owners that are small entities.

5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

183. The R&O adopts a narrow exemption from the Commission's requirement that owners of proposed towers requiring ASR registration provide 30 days of national and local notice to give members of the public an opportunity to comment on the proposed tower's potential environmental effects. The exemption from the notice requirements applies only to applicants seeking to register temporary antenna structures meeting certain criteria that greatly reduce the likelihood of any significant environmental effects. Specifically, proposed towers exempted from the Commission's local and national environmental notification requirement are those that (i) will be in use for 60 days or less, (ii) require notice of construction to the Federal Aviation Administration (FAA), (iii) do not require marking or lighting pursuant to FAA regulations, (iv) will be less than 200 feet in height, and (v) will involve minimal or no excavation.

184. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200 feet in height or within the glide slope of an airport must register the tower with the Commission on FCC Form 854. An applicant seeking to claim the temporary towers exemption from the environmental notification process must indicate on its FCC Form 854 that it is claiming the exemption for a new, proposed temporary tower and demonstrate that the proposed tower satisfies the applicable criteria. While small entities must comply with these requirements in order to take advantage of the exemption, on balance, the relief from compliance with local and national environmental notification requirements provided by the exemption greatly reduces burdens and economic impacts on small entities.

185. The applicant may seek an extension of the exemption from the Commission's local and national environmental notification requirement of up to sixty days through another filing of Form 854, if the applicant can demonstrate that the extension of the exemption period is warranted due to changed circumstances or information that emerged after the exempted tower was deployed. The exemption adopted in the R&O is intended specifically for proposed towers that are intended and expected to be deployed for no more than 60 days, and the option to apply for an extension is intended only for cases of unforeseen or changed circumstances or information. Small entities, like all applicants, are expected to seek extensions of the exemption period only rarely and any burdens or economic impacts incurred by applying for such extensions should be minimal.

6. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

186. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' The FRFA incorporates by reference all discussion in the R&O that considers the impact on small entities of the rules adopted by the Commission. In addition, the Commission's consideration of those issues as to which the impact on small entities was specifically discussed in the record is summarized below.

187. The actions taken in the R&O encourage and promote the deployment of advanced wireless broadband and other services by tailoring the regulatory review of new wireless network infrastructure consistent with the law and the public interest. The Commission anticipates that the steps taken in the R&O will not impose any significant economic impacts on small entities, and will in fact help reduce burdens on small entities by reducing the cost and delay associated with the deployment of such infrastructure.

188. In the R&O, the Commission takes action in four major areas relating to the regulation of wireless facility siting and construction. In each area, the rules the Commission adopts and clarifications the Commission makes will not increase burdens or costs on small entities. To the contrary, its actions will reduce costs and burdens associated with deploying wireless infrastructure.

189. First, the Commission adopts measures with regard to its NEPA process for review of environmental effects regarding wireless broadband deployment that should reduce existing regulatory costs for small entities that construct or deploy wireless infrastructure, and will not impose any additional costs on such entities. Specifically, the Commission clarifies that the existing NEPA categorical exclusion for antenna collocations on buildings and towers includes equipment associated with the antennas (such as wiring, cabling, cabinets, or backup-power), and that it also covers collocations in a building's interior. The Commission also expands the NEPA collocation categorical exclusion to cover collocations on structures other than buildings and towers, and adopts a new NEPA categorical exclusion for deployments, including deployments of new poles, in utility or communications rights-of-way that are in active use for such purposes, where the deployment does not constitute a substantial increase in size over the existing utility or communications uses. The Commission also adopts measures concerning its section 106 process for review of impact on historic properties. First, the Commission adopts certain

exclusions from section 106 review, and the Commission clarifies that the existing exclusions for certain collocations on buildings under the Commission's programmatic agreements extend to collocations inside buildings. These new exclusions and clarifications will reduce environmental compliance costs of small entities by providing that eligible proposed deployments of small wireless facilities do not require the preparation of an Environmental Assessment.

190. Second, the Commission adopts an exemption from the Commission's requirement that ASR applicants must provide local and national environmental notification prior to submitting a completed ASR application for certain temporary antenna structures meeting criteria that makes them unlikely to have significant environmental effects. Specifically, the Commission exempts antenna structures that (1) will be in place for 60 days or less; (2) require notice of construction to the FAA; (3) do not require marking or lighting under FAA regulations; (4) will be less than 200 feet above ground level; and (5) will involve minimal or no ground excavation. This exemption will reduce the burden on wireless broadband providers and other wireless service providers, including small entities.

191. Third, the Commission adopts several rules to clarify and implement the requirements of section 6409(a) of the Spectrum Act. In interpreting the statutory terms of this provision, such as ''wireless tower or base station,'' ''transmission equipment,'' and ''substantially change the physical dimensions,'' the Commission generally does not distinguish between large and small entities, as the statute provides no indication that such distinctions were intended, and such distinctions have been proposed. Further, these clarifications will help limit potential ambiguities within the rule and thus reduce the burden associated with complying with this statutory provision, including the burden on small entities. Generally, the Commission clarifies that section 6409(a) applies only to State and local governments acting in their regulatory role and does not apply to such entities acting in their proprietary capacities.

192. With regard to the process for reviewing an application under section 6409(a), the Commission provides that a State or local government may only require applicants to provide documentation that is reasonably related to determining whether the eligible facility request meets the requirements of section 6409(a) and that, within 60 days from the date of filing (accounting for tolling), a State or local government shall approve an application covered by section 6409(a). Where a State or local government fails to act on an application covered under section 6409(a) within the requisite time period, the application is deemed granted. Parties may bring claims under section 6409(a) to a court of competent jurisdiction. The Commission declines to entertain such disputes in a Commission adjudication, which would impose significant burdens on localities, many of which are small entities with no representation in Washington, DC or experience before the Commission. Limiting relief to court adjudication lessens the burden on applicants in general, and small entities specifically.

193. Lastly, the Commission adopts clarifications of its 2009 Declaratory Ruling, which established the time periods after which a State or local government has presumptively failed to act on a facilities siting application ''within a reasonable period of time'' under section 332(c)(7) of the Act. Specifically, the Commission clarifies that the timeframe begins to run when an application is first submitted, not when it is deemed complete by the reviewing government. Further, a determination of incompleteness tolls the shot clock only if the State or local government provides notice to the applicant in writing within 30 days of the application's submission, specifically delineating all missing information. Following a submission in response to a determination of incompleteness, any subsequent determination that an application remains incomplete must be based solely on the applicant's failure to supply missing information that was identified within the first 30 days. These clarifications will provide greater certainty in the application process and reduce the potential or need for serial requests for more information. These clarifications will facilitate faster application processing, reduce unreasonable delay, and reduce the burden on regulated entities, including small businesses.

194. The Commission also clarifies that to the extent DAS or small-cell facilities, including third-party facilities such as neutral host DAS deployments, are or will be used for the provision of personal wireless services, their siting applications are subject to the same presumptively reasonable timeframes that apply to applications related to other personal wireless service facilities under section 332(c)(7). The Commission clarifies further that the presumptively reasonable timeframes run regardless of any applicable moratoria, and that municipal property preferences are not per se unreasonably discriminatory or otherwise unlawful under section 332(c)(7). Finally, the Commission concludes that the explicit remedies under section 332(c)(7) preclude adoption of a deemed granted remedy for failures to act. These clarifications reduce confusion and delay within the siting process which in turn reduces the burden on industry and State and local jurisdictions alike, which may include small entities.

7. Federal Rules That Might Duplicate, Overlap, or Conflict With the Rules

195. None.

8. Report to Congress

196. The Commission will send a copy of the R&O, including the FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

9. Report to Small Business Administration

197. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the R&O, including the FRFA, to the Chief Counsel for Advocacy of the SBA.

B. Paperwork Reduction Act

198. The R&O contains revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the modified information collection requirements contained in this proceeding in a separate **Federal Register** Notice. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In addition, the Commission has described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA.

C. Congressional Review Act

199. The Commission will send a copy of the R&O in a report to be sent to Congress and the Government Accountability Office pursuant to the

Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A).

VI. Ordering Clauses

200. *It is ordered,* pursuant to sections 1, 2, 4(i), 7, 201, 301, 303, 309, and 332 of the Communications Act of 1934, as amended, sections 6003, 6213, and 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156, 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 303, 309, 332, 1403, 1433, and 1455(a), section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(C), and section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, that the R&O IS *hereby adopted.* If any section, subsection, paragraph, sentence, clause or phrase of the R&O or the rules adopted therein is declared invalid for any reason, the remaining portions of the R&O and the rules adopted therein *shall be* severable from the invalid part and *shall remain* in full force and effect.

201. *It is further ordered* that parts 1 and 17 of the Commission's Rules ARE *amended* as set forth in Appendix B of the R&O (see the Final Rules contained in this summary), and that these changes *shall be effective* 30 days after publication in the **Federal Register**, except for section 1.40001, which *shall be effective* 90 days after publication in the **Federal Register**; provided that those rules and requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act *shall become effective* after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

202. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Environmental impact statements, Federal buildings and facilities, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications.

47 CFR Part 17

Aviation safety, Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 and part 17 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 is amended to read as follows:

Authority: 15 U.S.C. 79, *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Section 1.1306 is amended by adding paragraph (c) and revising the first sentence of Note 1 read as follows:

§ 1.1306 Actions which are categorically excluded from environmental processing.

* * * * *

(c)(1) Unless § 1.1307(a)(4) is applicable, the provisions of § 1.1307(a) requiring the preparation of EAs do not encompass the construction of wireless facilities, including deployments on new or replacement poles, if:

(i) The facilities will be located in a right-of-way that is designated by a Federal, State, local, or Tribal government for communications towers, above-ground utility transmission or distribution lines, or any associated structures and equipment;

(ii) The right-of-way is in active use for such designated purposes; and

(iii) The facilities would not

(A) Increase the height of the tower or non-tower structure by more than 10% or twenty feet, whichever is greater, over existing support structures that are located in the right-of-way within the vicinity of the proposed construction;

(B) Involve the installation of more than four new equipment cabinets or more than one new equipment shelter;

(C) Add an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater (except that the deployment may exceed this size limit if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable); or

(D) Involve excavation outside the current site, defined as the area that is within the boundaries of the leased or owned property surrounding the deployment or that is in proximity to the structure and within the boundaries of the utility easement on which the facility is to be deployed, whichever is more restrictive.

(2) Such wireless facilities are subject to § 1.1307(b) and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in § 1.1307(b).

Note 1: The provisions of § 1.1307(a) requiring the preparation of EAs do not encompass the mounting of antenna(s) and associated equipment (such as wiring, cabling, cabinets, or backup-power), on or in an existing building, or on an antenna tower or other man-made structure, unless § 1.1307(a)(4) is applicable. * * *

* * * * *

■ 3. Section 1.1307 is amended by redesignating paragraph (a)(4) as (a)(4)(i), and by adding new paragraph (a)(4)(ii) and a Note to paragraph (a)(4)(ii) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

(a) * * *

(4) * * *

(ii) The requirements in paragraph (a)(4)(i) of this section do not apply to:

(A) The mounting of antennas (including associated equipment such as wiring, cabling, cabinets, or backup-power) on existing utility structures (including utility poles and electric transmission towers in active use by a ''utility'' as defined in Section 224 of the Communications Act, 47 U.S.C. 224, but not including light poles, lamp posts, and other structures whose primary purpose is to provide public lighting) where the deployment meets the following conditions:

(*1*) All antennas that are part of the deployment fit within enclosures (or if the antennas are exposed, within imaginary enclosures) that are individually no more than three cubic feet in volume, and all antennas on the structure, including any pre-existing antennas on the structure, fit within enclosures (or if the antennas are exposed, within imaginary enclosures) that total no more than six cubic feet in volume;

(*2*) All other wireless equipment associated with the structure, including pre-existing enclosures and including equipment on the ground associated with antennas on the structure, are cumulatively no more than seventeen cubic feet in volume, exclusive of

(i) Vertical cable runs for the connection of power and other services;

(*ii*) Ancillary equipment installed by other entities that is outside of the applicant's ownership or control, and

(*iii*) Comparable equipment from pre-existing wireless deployments on the structure;

(*3*) The deployment will involve no new ground disturbance; and

(*4*) The deployment would otherwise require the preparation of an EA under paragraph (a)(4)(i) of this section solely because of the age of the structure; or

(B) The mounting of antennas (including associated equipment such as wiring, cabling, cabinets, or backup-power) on buildings or other non-tower structures where the deployment meets the following conditions:

(*1*) There is an existing antenna on the building or structure;

(*2*) One of the following criteria is met:

(*i*) *Non-Visible Antennas.* The new antenna is not visible from any adjacent streets or surrounding public spaces and is added in the same vicinity as a pre-existing antenna;

(*ii*) *Visible Replacement Antennas.* The new antenna is visible from adjacent streets or surrounding public spaces, provided that

(*A*) It is a replacement for a pre-existing antenna,

(*B*) The new antenna will be located in the same vicinity as the pre-existing antenna,

(*C*) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna,

(*D*) The new antenna is not more than 3 feet larger in height or width (including all protuberances) than the pre-existing antenna, and

(*E*) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces; or

(*iii*) *Other Visible Antennas.* The new antenna is visible from adjacent streets or surrounding public spaces, provided that

(*A*) It is located in the same vicinity as a pre-existing antenna,

(*B*) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna,

(*C*) The pre-existing antenna was not deployed pursuant to the exclusion in this subsection (§ 1.1307(a)(4)(ii)(B)(*2*)(*iii*)),

(*D*) The new antenna is not more than three feet larger in height or width (including all protuberances) than the pre-existing antenna, and

(*E*) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces;

(*3*) The new antenna complies with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage or concealment requirements;

(*4*) The deployment of the new antenna involves no new ground disturbance; and

(*5*) The deployment would otherwise require the preparation of an EA under paragraph (a)(4) of this section solely because of the age of the structure.

Note to paragraph (a)(4)(ii): A non-visible new antenna is in the ''same vicinity'' as a pre-existing antenna if it will be collocated on the same rooftop, façade or other surface. A visible new antenna is in the ''same vicinity'' as a pre-existing antenna if it is on the same rooftop, façade, or other surface and the centerpoint of the new antenna is within ten feet of the centerpoint of the pre-existing antenna. A deployment causes no new ground disturbance when the depth and width of previous disturbance exceeds the proposed construction depth and width by at least two feet.

* * * * *

■ 4. Add Subpart CC to part 1 to read as follows:

Subpart CC—State and Local Review of Applications for Wireless Service Facility Modification

§ 1.40001 Wireless Facility Modifications.

(a) *Purpose.* These rules implement section 6409 of the Spectrum Act (codified at 47 U.S.C. 1455), which requires a State or local government to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station.

(b) *Definitions.* Terms used in this section have the following meanings.

(1) *Base station.* A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)–(ii) of this section.

(2) *Collocation.* The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(3) *Eligible facilities request.* Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(i) Collocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.

(4) *Eligible support structure.* Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

(5) *Existing.* A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

(6) *Site.* For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

(7) *Substantial change.* A modification substantially changes the physical dimensions of an eligible

support structure if it meets any of the following criteria:

(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside the current site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

(8) *Transmission equipment.* Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(9) *Tower.* Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(c) *Review of applications.* A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

(1) *Documentation requirement for review.* When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(2) *Timeframe for review.* Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.

(3) *Tolling of the timeframe for review.* The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.

(ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.

(iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) *Failure to act.* In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(5) *Remedies.* Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.

PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

■ 5. The authority citation for part 17 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply sections 301, 309, 48 Stat. 1081, 1085 as amended; 47 U.S.C. 301, 309.

■ 6. Amend § 17.4 by revising paragraphs (c)(1)(v) and (c)(1)(vi), and adding paragraph (c)(1)(vii) to read as follows:

§ 17.4 Antenna structure registration.

* * * * *

(c) * * *

(1) * * *

(v) For any other change that does not alter the physical structure, lighting, or geographic location of an existing structure;

(vi) For construction, modification, or replacement of an antenna structure on Federal land where another Federal agency has assumed responsibility for evaluating the potentially significant environmental effect of the proposed antenna structure on the quality of the human environment and for invoking any required environmental impact statement process, or for any other structure where another Federal agency has assumed such responsibilities pursuant to a written agreement with the Commission (*see* § 1.1311(e) of this chapter); or

(vii) For the construction or deployment of an antenna structure that will:

(A) Be in place for no more than 60 days,

(B) Requires notice of construction to the FAA,

(C) Does not require marking or lighting under FAA regulations,

(D) Will be less than 200 feet in height above ground level, and

(E) Will either involve no excavation or involve excavation only where the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet. An applicant that relies on this exception must wait 30 days after removal of the antenna structure before relying on this exception to deploy another antenna structure covering substantially the same service area.

* * * * *

[FR Doc. 2014–28897 Filed 1–7–15; 8:45 am]

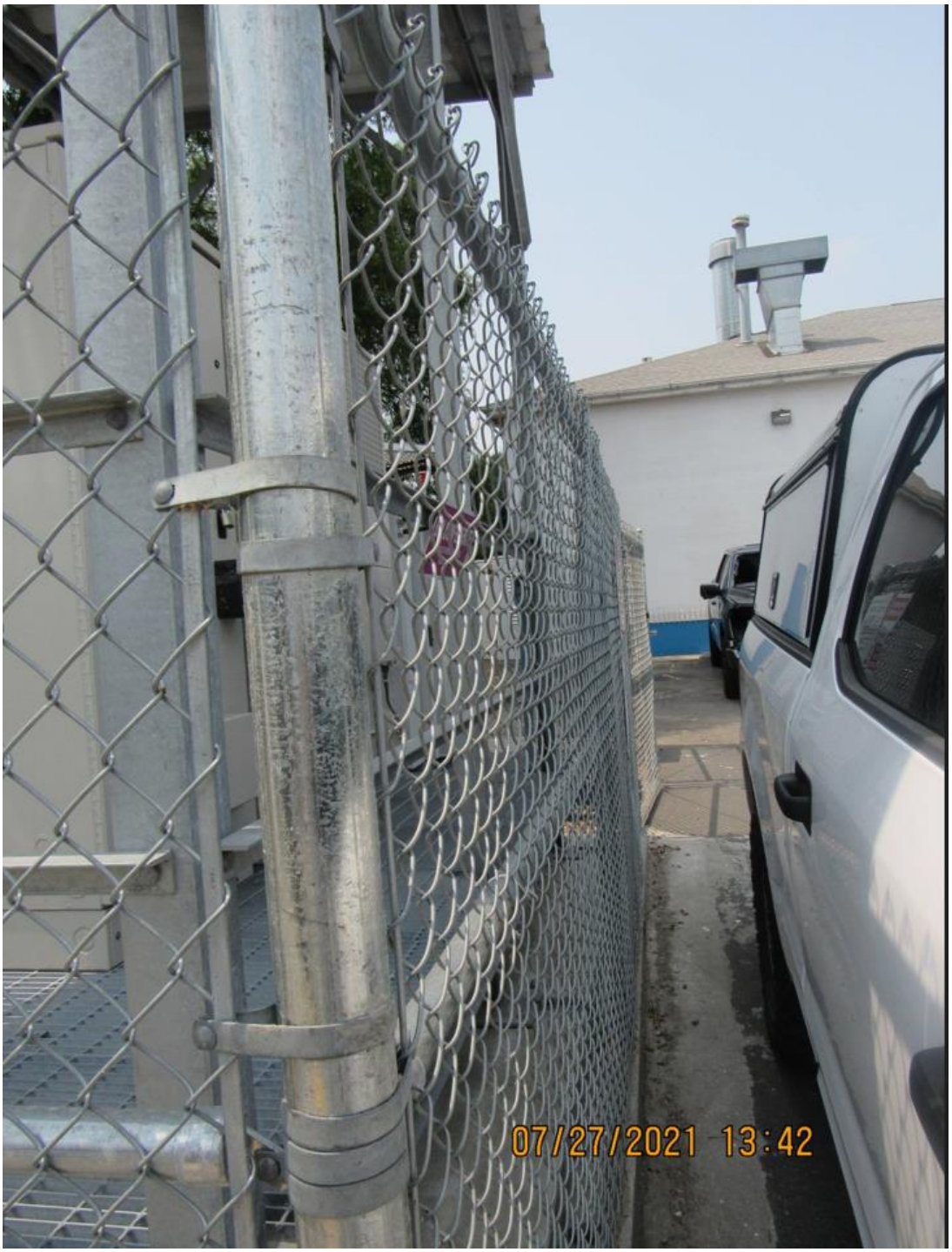
BILLING CODE 6712–01–P

8247 W. State Street, Garden City, ID
Conditional Use Permit application

PHOTOS OF SUBJECT SITE

The tower is in the parking lot, with existing screening to the south


CROWN CASTLE
07/27/2021 13:42


07/27/2021 13:42


07/27/2021 13:41

Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 6, 2020.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA amends 40 CFR chapter I as follows:

PART 180— TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.940 amend the table in paragraph (a) by adding alphabetically the entry ''Adipic acid'' to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
* * * * * * *		
Adipic acid	124–04–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * * * * * *		

* * * * *

[FR Doc. 2020–26005 Filed 12–2–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 19–250, RM–11849; FCC 20–153; FRS 17230]

Accelerating Wireless and Wireline Deployment by Streamlining Local Approval of Wireless Infrastructure Modifications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission revises portions of the Spectrum Act of 2012 to provide for streamlined state and local government review of modifications to existing wireless infrastructure that involve limited ground excavation or deployment of transmission equipment. The *Report and Order* promotes accelerated deployment of 5G and other advanced wireless services by facilitating the collocation of antennas and associated equipment on existing infrastructure while preserving the ability of state and local governments to manage and protect local land-use interests.

DATES: Effective January 4, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Georgios Leris, *Georgios.Leris@fcc.gov* or Belinda Nixon, *Belinda.Nixon@fcc.gov,* Competition & Infrastructure Policy Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in WT Docket No. 19–250, RM–11849; FCC 20–153, adopted on October 27, 2020, and released on November 3, 2020. The full text of this document is available for public inspection online at *https://www.fcc.gov/edocs.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format, etc.), and reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) may be requested by sending an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

1. In this *Report and Order,* the Commission revises its rule to provide for streamlined state and local review of modifications that involve limited ground excavation or deployment while preserving the ability of state and local governments to manage and protect local land-use interests. To facilitate the collocation of antennas and associated ground equipment, while recognizing the role of state and local governments in land use decisions, the Commission revises section 6409(a) rules to provide that excavation or deployment in a limited area beyond site boundaries would not disqualify the modification of an existing tower from streamlined state and local review on that basis.

2. This change is consistent with the recent amendment to the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas (Collocation NPA), which now provides that, in certain circumstances, excavation or deployment within the same limited area beyond a site boundary does not warrant federal historic preservation review of a collocation. In addition, we revise the definition of ''site'' in section 6409(a) rules in a manner that will ensure that the site boundaries from which limited expansion is measured appropriately

reflect prior state or local government review and approval. The Commission's actions in this document carefully balance the acceleration of the deployment of advanced wireless services, particularly through the use of existing infrastructure where efficient to do so, with the preservation of states' and localities' ability to manage and protect local land-use interests.

3. To advance ''Congress's goal of facilitating rapid deployment [of wireless broadband service]'' and to provide clarity to the industry, the Commission in 2014 adopted rules to implement section 6409(a) of the Spectrum Act of 2012 (80 FR 1237, January 8, 2015). Section 6409(a) provides, in relevant part, that ''[n]otwithstanding [47 U.S.C. 332(c)(7)] or any other provision of law, a state or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.'' Among other matters, the 2014 Infrastructure Order established a 60-day period in which a state or local government must approve an ''eligible facilities request.'' (80 FR 1267, January 8, 2015). The Commission's rules define ''eligible facilities request'' as ''any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) Collocation of new transmission equipment; (ii) Removal of transmission equipment; or (iii) Replacement of transmission equipment.'' (80 FR 1252).

4. The 2014 Infrastructure Order adopted objective standards for determining when a proposed modification would ''substantially change the physical dimensions'' of an existing tower or base station. Among other standards, the Commission determined ''that a modification is a substantial change if it entails any excavation or deployment outside the current site of the tower or base station.'' (80 FR 1254). The Commission defined ''site'' for towers not located in the public rights-of-way as ''the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site,'' (80 FR 1255) and it defined ''site'' for other eligible support structures as being ''further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.'' (Ibid).

5. In adopting the standard for excavation and deployment that would be considered a substantial change under section 6409(a), the Commission looked to analogous concerns about impacts on historic properties reflected in implementation of the National Historic Preservation Act and primarily relied on similar language in the Collocation NPA. At that time, the Commission considered, but declined to adopt, a proposal to exclude from the scope of ''substantial change'' any excavation or deployment of up to 30 feet in any direction of a site, a proposal that was consistent with an exclusion from section 106 review for replacement towers in the Wireless Facilities NPA. In reconciling different standards for potentially analogous deployments in the NPAs, the Commission reasoned that the activities covered under section 6409(a) ''are more nearly analogous to those covered under the Collocation [NPA] than under the replacement towers exclusion in the [Wireless Facilities] NPA,'' but the Commission did not explore the reasoning for the discrepancy between the NPAs, nor did it further explain why it chose to borrow from the older NPA instead of the more modern one. In addition, the Commission did not make a determination that it would be unreasonable to use 30 feet as a touchstone for defining what types of excavations would ''substantially change the physical dimensions of [an existing] tower or base station.'' Rather, the Commission established a reasonable, objective, and concrete set of criteria to eliminate the need for protracted local zoning review, in furtherance of the goals of the statute, by drawing guidance from the consensus represented by the approach taken in the Collocation NPA. That same Collocation NPA, however, was recently amended to reflect an updated consensus on what might be best regarded as a substantial increase in the size of an existing tower, as it excludes a collocation from section 106 review if it involves excavation within 30 feet outside the boundaries of the tower site.

6. On August 27, 2019, the Wireless Infrastructure Association (WIA) filed a Petition for Declaratory Ruling (84 FR 50810, September 26, 2019) requesting that the Commission clarify that, for towers other than towers in the public rights-of-way, the ''current site'' for purposes of § 1.6100(b)(7)(iv) is the property leased or owned by the applicant at the time it submits a section 6409(a) application and not the initial site boundaries. On the same day, WIA also filed a Petition for Rulemaking (Ibid) requesting that the Commission amend its rules to establish that a modification would not cause a ''substantial change'' if it entails excavation or deployments at locations of up to 30 feet in any direction outside the boundaries of a tower compound.

7. On June 10, 2020, the Commission adopted a *Notice of Proposed Rulemaking (NPRM)* that sought comment on two issues regarding the scope of the streamlined application process under section 6409(a): (i) The definition of ''site'' under § 1.6100(b)(6); and (ii) the scope of modifications under § 1.6100(b)(7)(iv). (85 FR 39859, July 2, 2020). The Commission proposed to revise the definition of site ''to make clear that 'site' refers to the boundary of the leased or owned property surrounding the tower and any access or utility easements currently related to the site as of the date that the facility was last reviewed and approved by a locality.'' The Commission also proposed ''to amend § 1.6100(b)(7)(iv) so that modification of an existing facility that entails ground excavation or deployment of up to 30 feet in any direction outside the facility's site will be eligible for streamlined processing under section 6409(a).'' The *NPRM* asked, in the alternative, whether the Commission ''should revise the definition of site in § 1.6100(b)(6), as proposed above, without making the proposed change to § 1.6100(b)(7)(iv) for excavation or deployment of up to 30 feet outside the site.'' In addition, the *NPRM* asked ''whether to define site in § 1.6100(b)(6) as the boundary of the leased or owned property surrounding the tower and any access or utility easements related to the site *as of the date an applicant submits a modification request.*'' Finally, the *NPRM* asked about alternatives to the proposals, costs, and benefits.

8. After reviewing the record in this proceeding, the Commission makes targeted revisions to § 1.6100(b)(7)(iv) and (b)(6) of its rules to broaden the scope of wireless facility modifications that are eligible for streamlined review under section 6409(a). The Commission has considered collocation a tool for advancing wireless services' deployment for over three decades. As the Commission noted in the 2014 Infrastructure Order, collocation ''is often the most efficient and economical solution for mobile wireless service providers that need new cell sites to expand their existing coverage area, increase their capacity, or deploy new advanced services.'' The actions the Commission takes in this document will further streamline the approval process for using existing infrastructure to expedite wireless connectivity efforts nationwide while preserving localities' ability to manage local zoning.

9. First, the Commission amends § 1.6100(b)(7)(iv) to provide that, for towers not located in the public rights-of-way, a modification of an existing site that entails ground excavation or deployment of transmission equipment of up to 30 feet in any direction outside a tower's site will not be disqualified from streamlined processing under section 6409(a) on that basis. In general, § 1.6100(b)(7) describes when an eligible facilities request will ''substantially change the physical dimensions'' of a facility under section 6409(a). Because the statutory term ''substantially change'' is ambiguous, § 1.6100(b)(7) elaborates on the phrase by providing numerical and objective criteria for determining when a proposed expansion will ''substantially change'' the dimensions of a facility. For the reasons explained more fully below, the Commission concludes that proposed ground excavation or deployment of up to 30 feet in any direction outside a tower's site is sufficiently modest so as not to ''substantially change the physical dimensions'' of a tower or base station, and that this amendment to the Commission's rules thus represents a permissible construction of section 6409(a).

10. In promulgating the initial rules to implement section 6409(a), the Commission determined that ''an objective definition'' of what constitutes a substantial change ''will provide an appropriate balance between municipal flexibility and the rapid deployment of covered facilities.'' With respect to excavation and deployment in association with modifications to existing structures, the Commission found that the appropriate standard for what constitutes a substantial change was any excavation or deployment outside of the site boundaries. Here, the Commission concludes that a revision to this standard is warranted by certain changes since its initial determination: The recent recognition by the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers of 30 feet as an appropriate threshold in the context of federal historic preservation review of collocations; and the ongoing evolution of wireless networks that rely on an increasing number of collocations, where they are an efficient alternative to new tower construction, to meet the rising demand for advanced wireless services. In light of these changes, the Commission concludes that it is reasonable to adjust the line drawn by the Commission in 2014 for streamlined treatment of excavations or deployments associated with collocations, and in doing so the Commission continues to believe that it is appropriate to consider in this context the analogous line drawn in the federal historic preservation context as a relevant benchmark.

11. As an initial matter, the Commission recognizes that it relied on the Wireless Facilities NPA and Collocation NPA to inform its adoption of initial rules implementing section 6409(a). In particular, the Commission stated that ''the objective test for 'substantial increase in size' under the Collocation [NPA] should inform its consideration of the factors to consider when assessing a 'substantial change in physical dimensions,'" and that this approach ''reflects the Commission's general determination that definitions in the Collocation [NPA] and [Wireless Facilities] NPA should inform the Commission's interpretation of similar terms in [s]ection 6409(a).'' With respect to excavation and deployment associated with a modification of an existing structure, the Commission relied on a provision in the Collocation NPA and determined that ''a modification is a substantial change if it entails any excavation or deployment outside the current site of the tower or base station.'' Further, the Commission considered, but declined to adopt, a proposal to exclude from the scope of ''substantial change'' any excavation or deployment of up to 30 feet in any direction from a site's boundaries, which would have been consistent with an exclusion from section 106 review for replacement towers in the Wireless Facilities NPA. Importantly, the Commission did not characterize the 30-foot standard in the Wireless Facilities NPA to be an unreasonable choice. The Commission elected to follow the language in the Collocation NPA given commonalities between the types of deployments referred to in section 6409 and the types of deployments covered under the Collocation NPA, as well as input from industry and localities.

12. The Collocation NPA was recently amended, however, to align with the Wireless Facilities NPA, reflecting a recognition that, in the context of federal historic preservation review, permitting a limited expansion beyond the site boundaries to proceed without substantial review encourages collocations without significantly affecting historic preservation interests. Specifically, on July 10, 2020, the Wireless Telecommunications Bureau Chief (on delegated authority from the Commission), the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers executed the Amended Collocation NPA to eliminate an inconsistency between the Collocation NPA and the Wireless Facilities NPA (85 FR 51357, August 20, 2020).

13. The Amended Collocation NPA now provides that, for the purpose of determining whether a collocation may be excluded from section 106 review, a collocation is a substantial increase in the size of the tower if it ''would expand the boundaries of the current tower site by more than 30 feet in any direction or involve excavation outside these expanded boundaries.'' In adopting that change, the Amended Collocation NPA stated that, among other reasons, the parties ''developed this second amendment to the Collocation Agreement to allow project proponents the same review efficiency [applicable to tower replacements in the Wireless Facilities NPA] in regard to limited excavation beyond the tower site boundaries for collocation, thereby encouraging project proponents to conduct more collocation activities instead of constructing new towers . . . .'' The parties therefore recognized the limited effect that an up to 30-foot compound expansion would impose on the site, which is also consistent with the Commission's rationale in adopting the replacement tower exclusion in the Wireless Facilities NPA. Indeed, in the 2004 Report and Order (70 FR 556, January 4, 2005) implementing the Wireless Facilities NPA, the Commission concluded that a 30-foot standard was ''reasonable and appropriate,'' and reasoned that ''construction and excavation to within 30 feet of the existing leased or owned property means that only a minimal amount of previously undisturbed ground, if any, would be turned, and that would be very close to the existing construction.'' The Commission's decision to permit an eligible facilities request to include limited excavation and deployment of up to 30 feet in any direction harmonizes its rules under section 6409(a) with permitted compound expansions for exclusion from section 106 review for replacement towers under the Wireless Facilities NPA and collocations under the Collocation NPA.

14. In that regard, the Commission disagrees with the localities' argument that the Collocation NPA ''has no bearing on [this] matter.'' The definition of ''substantial increase in size of the tower'' in the Collocation NPA was a primary basis for the Commission's decision in the 2014 Infrastructure Order to define a substantial change as any excavation or deployment outside the boundaries of a tower site. Accordingly, the amendment to the

Collocation NPA to provide that excavations of up to 30 feet of the boundaries of a site is not a substantial increase in size provides support for the Commission's decision in this *Report and Order* to once again make the section 6409(a) rules consistent with the Collocation NPA. Retaining the existing definition despite the amendment to the Collocation NPA could create confusion and invite uncertainty.

15. In addition, the Commission finds that the revised 30-foot standard is supported by the current trends toward collocations and technological changes that the record evidences while preserving localities' zoning authority. Collocations necessarily include installing transmission equipment that supports the tower antenna on a site. Industry commenters claim that ''[t]he majority of existing towers were built many years ago and were intended to support the operations of a single carrier.'' Following the 2014 Infrastructure Order's promotion of collocations, more towers now house several operators' antennas and other transmission equipment, and industry commenters assert that, in many cases, any space that was once available at those tower sites has been used. As a result, there is less space at tower sites for additional collocations without minor modifications to sites to accommodate the expansion of equipment serving existing operators at the sites and the addition of new equipment serving new operators at the sites. As NTCA states, ''[l]ike other wireless providers, NTCA members often find that colocations on towers require the additional installation of . . . facilities necessary to support transmission equipment. This has become increasingly difficult as towers built to hold one carrier's facilities may be used to support those utilized by multiple wireless providers.'' Further, additional space is generally necessary to add the latest technologies enabling 5G services, such as multi-access edge computing, which requires more space than other collocation infrastructure. Given the need for more space on the ground to accommodate a growing number of facility modifications, the Commission finds that streamlined treatment of limited compound expansions is essential to achieve the degree of accelerated advanced wireless network deployment that will best serve the public interest. Indeed, WIA states that the 30-foot standard ''appropriately provides a reasonable and realistic degree of flexibility.'' Further, in light of these developments and the recognition of a new compound expansion standard in the context of historic preservation review of collocations, the Commission finds it reasonable to adjust the line drawn by the Commission in 2014 for determining whether limited compound expansion is a substantial change that disqualifies a modification from eligibility for streamlined treatment.

16. The Commission also finds that streamlined treatment of limited compound expansions will promote public safety and network resiliency. For example, the Commission notes that Crown Castle states that more than 40 percent of its site expansions in the past 18 months were solely for ''adding backup emergency generators to add resiliency to the network.'' And WIA states that, ''in many cases, the need for a limited expansion of the compound is being driven by public safety demands and the desire to improve network resiliency.'' The Commission's rule change will also promote public safety in another context—industry commenters state that the proposed rule changes will ensure expeditious and effective deployment of FirstNet's network, which Congress directed to leverage collocation on existing infrastructure ''to the maximum extent economically desirable.'' AT&T, for example, states that ''many collocations on existing towers being performed to build a public safety broadband network for [FirstNet] entail site expansions to add generators as well as Band 14 equipment.'' The Commission therefore agrees with commenters that these changes will promote public safety.

17. The Commission concludes that 30 feet is an appropriate threshold. The objective standard the Commission adopts in this document is consistent with the current collocation marketplace and with the threshold adopted in the Wireless Facilities NPA and recently included in the Amended Collocation NPA. In affirming the 2014 Infrastructure Order, the Fourth Circuit stated that the order ''provide[d] objective and numerical standards to establish when an eligible facilities request would 'substantially change the physical dimensions' '' of a site. (*Montgomery County, Md.* v. *FCC,* 811 F.3d at 130; *see also id.* at 131 n.8). Here, the Commission extends those objective and numerical standards in a manner that reflects the recent recognition of 30 feet as an appropriate standard in the federal historic preservation context and the changes in the collocation marketplace, which is lacking space for collocations.

18. The Commission believes that its actions in this document, which reflect the Amended Collocation NPA and collocation marketplace changes since the Commission's determination in 2014, ''will provide an appropriate balance between municipal flexibility and the rapid deployment of covered facilities.'' Indeed, the record reflects that the deployment of transmission equipment within the expanded 30-foot area will be limited, buttressing the Commission's view that 30 feet is a reasonable limit to expansion that does not constitute a substantial change and therefore should be subject to streamlined review under section 6409 and the Commission's implementing regulations. Crown Castle states that the 30-foot standard ''will be sufficient to accommodate the types of minor equipment additions that Crown Castle must often make as part of a collocation or other site modification.'' Crown Castle presents several representative examples of proposed minor site expansions, which include ''additional equipment, equipment upgrades, new collocations, and back-up generator installations.'' These examples demonstrate that compound expansions occur as close to the tower as possible, as ''customers typically require their equipment to be in close proximity to the tower, their other equipment, power sources, available fiber, and any back-up power supply.'' These examples also demonstrate that construction within a 30-foot perimeter of an existing site would not result in what could be considered substantial changes to the physical footprint of existing sites, especially when considered in conjunction with other limitations in the Commission's rules that it is not altering.

19. Localities generally oppose any revision to the Commission's existing ''substantial change'' definition that would enable streamlined treatment of modifications involving compound expansion outside of a site,[1] but request

[1] To the extent that the localities' opposition to our decision rests on the notion that an expansion is only permitted if it involves deployment on the existing tower as opposed to within the site around the tower, we reject that argument. The 2014 rules already permit streamlined treatment of deployments around the tower as long as such deployments stay within the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. *See, e.g.,* 2014 Infrastructure Order, 29 FCC Rcd at 12949, para. 198; 47 CFR 1.6100(b)(6). As discussed below, the permissible modifications under our new rules would relate only to equipment that ''facilitates transmission for any Commission-licensed or authorized wireless communication service'' from the existing tower, consistent with the statute and definitions in § 1.6100. *See* 47 CFR 1.6100(b)(8) (defining ''transmission equipment''). Accordingly, the deployment of such equipment would clearly impact the equipment touching that structure. It is thus more than reasonable for the Commission to rely on its statutory authority to classify such

that, if such changes nonetheless are made, they should be limited in certain ways. First, the National Association of Telecommunication Officers and Advisors (NATOA) and Local Governments express concern that the rule change with respect to compound expansion could be interpreted to permit the deployment of new towers within the expanded area, and they request that the Commission limit the permissible deployment within the expanded area to transmission equipment. The Commission agrees that the deployments referenced in § 1.6100(b)(7)(iv) are deployments of transmission equipment. Under the Commission's current rules, any eligible facilities request—a request that is eligible for section 6409(a) treatment—must involve the collocation, replacement, or removal of transmission equipment. Accordingly, any deployment outside the site boundary that is eligible for section 6409(a) treatment under § 1.6100(b)(7)(iv), including deployments within 30 feet of the site boundary for a tower outside the public rights-of-way, would be limited to the deployment of transmission equipment, not new towers.

20. Second, NATOA and Local Governments propose that the site boundary from which a compound expansion will be measured should exclude easements related to that site. The Commission agrees. The definition of ''site'' in the Commission's current rules, for towers other than towers in the public rights-of-way, is ''the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.'' The Commission finds, though, that providing a 30-foot expansion for excavation or deployment along an easement related to the site is not necessary to meet the goal of facilitating wireless infrastructure deployment, because it is more likely that additional equipment will need to be placed in a limited area outside the leased or owned property rather than outside the easement related to the site. Further, excavation or deployment in an area 30 feet outside an easement, which could be miles in length, could result in a substantial change that would not be entitled to streamlined treatment under section 6409(a).

21. Third, NATOA and Local Governments request that the Commission restrict the size of transmission equipment deployed outside the site. The Commission finds that, given the limited types of transmission equipment deployed for collocations, such a restriction is not necessary to consider excavation or deployment within the 30-foot expansion area to be outside the scope of a substantial change. Additionally, size restrictions based on current equipment may unnecessarily restrict the deployment of future technology, which may include larger transmission equipment than currently deployed or available. Finally, the other substantial change limitations in § 1.6100(b)(7) continue to apply to modifications under section 6409(a).

22. Fourth, NATOA and Local Governments assert that setting a 30-foot limit on excavation or deployment outside site boundaries, without regard to the size of the existing tower site, could permit substantial changes to qualify for streamlined treatment. In particular, NATOA and Local Governments propose that, to the extent the Commission revises its ''substantial change'' definition, the compound expansion standard should be ''the lesser of the following distance[s] from the current site (not including easements related to the site): a. 20% of the length or width of the current site measured as a longitudinal or latitudinal line from the current site to the excavation or deployment; or b. 30 feet.'' The Commission declines to adopt this proposal because, on balance, the potential problems it could create outweigh the potential benefits it could achieve. A standard of ''20% of the length or width of the current site'' would be difficult to administer, given that a site boundary is not necessarily a symmetrical shape. In addition, while the record supports the determination that a 30-foot expansion would be sufficient to accommodate minor equipment additions, the record does not provide support for the determination that the ''20%'' standard would accomplish this goal. Moreover, adopting the ''20%'' proposal would provide limited additional benefit in addressing the concern raised by NATOA and Local Governments. Because a small tower site typically is associated with a small tower that has limited space for additional antennas, it is unlikely that operators would need to place a significant amount of additional qualifying transmission equipment in an area outside the site boundaries. In addition, any modification to an existing tower that involves excavation or deployment within the 30-foot expanded area will be subject to the other criteria in the Commission's rules for determining whether there is a substantial change that does not warrant streamlined treatment under section 6409(a). Those criteria, which the Commission does not alter in this document, provide further limitation on the size or scope of a modification that involves excavation or deployment within 30 feet of the site boundaries. For example, those criteria limit the modifications that would qualify for streamlined treatment by the number of additional equipment cabinets and by the increase in height and girth of the tower.

23. The Commission's limited adjustment to the definition of substantial change in the context of excavations or deployments is further supported by land-use laws in several states. In particular, the Commission observes that at least ''eight states have passed laws that expressly permit compound expansion within certain limits . . . under an exempt or expedited review process.'' Most of these laws allow expansion beyond 30 feet from the approved site. As Crown Castle states, ''these state laws are a benefit to both the wireless industry and local officials. They permit the wireless industry to meet the burgeoning network demands while also providing certainty and clarity to all involved.''

24. The Commission finds that the standard it adopted in this document continues to be a reasonable line drawing exercise in defining ''substantial change,'' and it reflects a more appropriate balancing of the promotion of ''rapid wireless facility deployment and preserving states' and localities' ability to manage and protect local land-use interests'' than the Commission articulated in 2014. In that regard, the Commission finds that it is in the public interest to modify its prior decision on what constitutes substantial change within the context of excavation or deployment.

25. In addition to amending § 1.6100(b)(7)(iv), the Commission revises § 1.6100(b)(6) of the Commission's rules to define the current boundaries of the ''site'' of a tower outside of public rights-of-way in a manner relative to the prior approval required by the state or local government. In conjunction with § 1.6100(b)(7), § 1.6100(b)(6) informs when excavation or deployment associated with a modification will ''substantially change the physical dimensions'' of a facility under section 6409(a). While the word ''site'' does not itself appear in section 6409, § 1.6100(b)(7)(iv) uses the term in describing when excavation or deployment might be so distant from an existing structure that such

deployment as a modification of that tower and to expand the surrounding area to accommodate such deployment.

modifications would ''substantially change the physical dimensions'' of the facility. In amending its current definition, the Commission supplies a temporal baseline against which to measure whether a proposed modification would ''substantially'' change the facility. For the reasons explained more fully below, the Commission thinks that this amendment represents a reasonable construction of the ambiguous statutory language; ascertaining whether a modification ''substantially changes'' an existing structure requires establishing a baseline against which to measure the proposed change. Here, because the statutory language involves streamlined approval of modifications to existing facilities, it is reasonable, based on the statutory language, to measure the boundaries of a site by reference to when a state or local government last had the opportunity to review or approve the structure that the applicant seeks to modify, if such approval occurred prior to section 6409 or otherwise outside of the section 6409(a) process. After all, the objective of the statute is to streamline approval of additions to structures that were already approved.

26. Because the Commission's actions in this document permit streamlined processing for modifications that entail ground excavation or deployment up to 30 feet outside a current site, it finds it necessary to clarify and provide greater certainty to applicants and localities about the appropriate temporal baseline for evaluating changes to a site. While the Commission did not have reason to elaborate on the meaning of a current site in the 2014 Infrastructure Order, because it defined any excavation or deployment outside a site as a substantial change, the Commission did establish other temporal reference points for evaluating other substantial change criteria, including height increases and concealment elements. The Commission therefore bases its revision to the definition of ''site'' on the terminology and reasoning articulated by the Commission in those related contexts, which have been upheld as a permissible construction of an ambiguous statutory provision.

27. Specifically, in the 2014 Infrastructure Order, the Commission found that, in the context of height increases, ''whether a modification constitutes a substantial change must be determined by measuring the change in height from the dimensions of the 'tower or base station' as originally approved or as of the most recent modification that received local zoning or similar regulatory approval prior to the passage of the Spectrum Act, whichever is greater.'' In adopting that standard, the Commission noted that ''since the Spectrum Act became law, approval of covered requests has been mandatory and therefore, approved changes after that time may not establish an appropriate baseline because they may not reflect a siting authority's judgment that the modified structure is consistent with local land use values.'' Similarly, in the Commission's recent Declaratory Ruling (85 FR 45126, July 27, 2020), it clarified that ''existing'' concealment elements ''must have been part of the facility that was considered by the locality at the original approval of the tower or at the modification to the original tower, if the approval of the modification occurred prior to the Spectrum Act or lawfully outside of the section 6409(a) process (for instance, an approval for a modification that did not qualify for streamlined section 6409(a) treatment).''

28. The Commission finds that it is in the public interest to use similar text and reasoning in adopting the revised definition of ''site'' in this *Report and Order.* Here, the Commission similarly defines what would constitute a substantial change to infrastructure that was previously approved by localities under applicable local law—in this case, in the context of excavation or deployment relative to the boundaries of a site. The Commission revises the definition of ''site'' to provide that the current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a state or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process. Localities assert that the definition of ''site'' should ensure that the ''facility was last reviewed and approved by a locality with full discretion'' and not as an eligible facilities request. The Commission agrees with commenters that a site's boundaries should not be measured—for purposes of setting the 30-foot distance in a request for modification under section 6409(a)—from the expanded boundary points that were established by any approvals granted or deemed granted pursuant to an ''eligible facilities request'' under section 6409(a). The Commission does not agree, however, with localities' framing of the definition of ''site'' in terms of the broad concept of discretion. First, a standard that relies on whether the locality has ''full discretion'' to make a decision would create uncertainty in determining whether a particular approval meets that standard. Second, non-discretionary approvals could include instances where a locality's review is limited by state law rather than by section 6409(a), and the Commission does not find it appropriate for it to engage in line drawing under section 6409(a) based on potential interaction between state and local law.

29. The Commission declines to adopt the industry's ''hybrid'' definition of ''site.'' Specifically, Crown Castle claims that the industry has interpreted and relied on the definition of ''site'' to mean the boundaries of the leased or owned property as of the date an applicant files an application with the locality. The industry therefore proposes a hybrid approach, which urges us to define site as of ''the later of (a) [the date that the Commission issues a new rule under the [*NPRM*]]; or (b) the date of the last review and approval related to said tower by a state or local government issued outside of the framework of 47 U.S.C. 1455(a) and these regulations promulgated thereunder.'' Adopting that proposal would risk permitting a tower owner to file an eligible facilities request even if it may have substantially increased the size of a tower site prior to the adoption of this *Report and Order* and without any necessary approval from a locality. Indeed, several localities caution against the industry's proposal. They raise concerns that adopting the industry's proposed definition would create ''unending accretion of [a] site by repeated applications for expansion.'' The Commission shares those concerns, and finds that its revision addresses them by ensuring that a locality has reviewed and approved the eligible support structure that is the subject of the eligible facilities request outside of the section 6409(a) process, while recognizing that the boundaries may have changed since the locality initially approved the eligible support structure. Further, the Commission maintains the 2014 Infrastructure Order's approach that a locality ''is not obligated to grant a collocation application under [s]ection 6409(a)'' if ''a tower or base station was constructed or deployed without proper review, was not required to undergo siting review, or does not support transmission equipment that received another form of affirmative State or local regulatory approval[.]''

30. Crown Castle also proposes that, to the extent that the Commission revises the definition of ''site'' as proposed in the *NPRM,* it should revise the language to provide that the site boundaries are determined as of the date a locality ''last reviewed and issued a

permit,'' rather than as of the date the locality last reviewed and approved the site. Crown Castle claims that, contrary to an approval, a ''permit . . . applies to a wide variety of processes, and represents a tangible and unambiguous event[.]'' The Commission declines to adopt Crown Castle's proposal, as the mere issuance of a permit (*e.g.,* an electrical permit) does not necessarily involve a locality's review of the eligible support structure, and thus would not necessarily provide an opportunity for the locality to take into account an increase in the size of the site associated with that structure.[2]

31. Accordingly, the Commission revises § 1.6100(b)(6) to read as set out in the regulatory text below.

32. The Commission emphasizes that its revisions to the compound expansion provision in § 1.6100(b)(7)(iv) and to the definition of ''site'' in § 1.6100(b)(6) do not apply to towers in the public rights-of-way. The 2014 Infrastructure Order provided for streamlined review in more narrowly targeted circumstances with respect to towers in the public rights-of-way, and the Commission leaves those distinctions unchanged. The Commission has recognized that activities in public rights-of-way ''are more likely to raise aesthetic, safety, and other issues,'' and that ''towers in the public rights-of-way should be subject to the more restrictive . . . criteria applicable to non-tower structures rather than the criteria applicable to other towers.'' The record reflects agreement by both industry and locality commenters that the Commission's rule change to provide for compound expansion should not apply to towers in the public rights-of-way. The Commission's revised compound expansion rule also does not apply to non-tower structures (*e.g.,* base stations), which ''use very different support structures and equipment configurations'' than towers.

33. The Commission also emphasizes that its actions here are not intended to affect any setback requirements that may apply to a site, and that it preserves localities' authority to impose requirements on local-government property. Further, the expansion of up to 30 feet in any direction is subject to any land-use requirements or permissions that a local authority may have imposed or granted within the allowed expansion (*e.g.,* storm drain easement) at the time of the last review by a locality. The Commission also clarifies that the revised definition of ''site'' does not restrict a locality from issuing building permits (*e.g.,* electrical) or approving easements within the expanded boundaries (*e.g.,* a sewer or storm drain easement; a road; or a bike path). The Commission further clarifies, however, that changes in zoning regulations since the last local government review would not disqualify from section 6409(a) treatment those compound expansions that otherwise would be permitted under its revisions.

34. While localities raise health and safety concerns with modifying the scope of substantial change, the Commission observes that the modifications it makes in this document do not affect localities' ability to address those concerns. The Commission previously has clarified that neither the statute nor its rules preempt localities' health and safety requirements or their procedures for reviewing and enforcing compliance with such requirements, and the Commission reaffirms this conclusion in this document. The Commission emphasizes that section 6409(a) ''does not preclude States and localities from continuing to require compliance with generally applicable health and safety requirements on the placement and operation of backup power sources, including noise control ordinances if any.'' The Commission finds that its revision strikes the appropriate balance between promoting rapid wireless facility deployment while preserving localities' local-use authority.

35. Finally, the Commission disagrees with the contentions of some localities that it lacks the legal authority to adopt some or all of the rule changes that it promulgates in this document, or that the Administrative Procedure Act otherwise precludes such action. Localities allege several infirmities. First, Virginia Localities argue that Congress limited the Commission's authority to changes to the dimensions of towers and base stations only, and not to the underlying site. The Commission disagrees with that artificial distinction. A tower cannot exist without a site. And ''[t]here is no question that [certain] terms of the Spectrum Act . . . are ambiguous,'' including what constitutes substantial change to a site. (*Montgomery County, Md.* v. *FCC,* 811 F.3d at 129; *id.* at 130). The Fourth Circuit determined that the Commission can ''establish[] objective criteria for determining when a proposed modification 'substantially changes the physical dimensions' '' of an eligible support structure. (*Id.* at 129 n.5). The *Report and Order*'s revisions to the terms ''site'' and ''substantial change'' ensure that wireless deployments will continue while preserving localities' site review and approval process.

36. Second, some localities argue that the Commission failed to provide the specific rule language in the *NPRM* and that the *NPRM* contains several ambiguities. Virginia Localities claim that it would be ''very difficult to assess the potential practical effects of the proposed amendment to the EFR Rule without language to evaluate.'' Local Governments claim that, among other issues, the *NPRM* is ambiguous on the operative date of the approval, the operative boundaries of the proposed expansion, and whether the definition of ''site'' will provide for other eligible support structures. Western Communities Coalition claims that the *NPRM* ''appears to suggest that various rule changes might be limited to 'macro tower compounds.' ''

37. These arguments lack merit. The APA requires that an agency's notice of proposed rulemaking must include ''either the terms *or substance of the proposed rule or a description of the subjects and issues involved.*'' The D.C. Circuit has held that a notice of proposed rulemaking meets the requirements of administrative law if it ''provide[s] sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.'' (*Honeywell International, Inc.* v. *EPA,* 372 F.3d 441, 445 (D.C. Cir. 2004) (internal quotation marks omitted)). The *NPRM* in this proceeding did just that. Not only did the Commission include the substance of the proposed rule and describe the subjects and issues involved, it also clearly proposed specific language for the definition of ''site'' and the revision to ''substantial change,'' and it offered specific alternatives and sought comment on other possible options. The actions the Commission takes in this document reflect commenters' responses to the *NPRM.* For example, in response to the Commission's proposed definition of ''site,'' it establishes site boundaries as those that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a state or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process. Furthermore, various changes the Commission is making to the

[2] Crown Castle's proposal would also introduce more uncertainty than it purports to cure. A locality may issue building, electrical, or other permits for a site without reviewing the eligible support structure on that site. A permit may therefore not constitute a ''proper review'' of a site. Review and approval of the eligible support structure, on the other hand, provides an opportunity for the locality to take into account an increase in the size of the site.

proposed language are reasonably foreseeable modifications designed to prevent any confusion that the proposed language might have caused based on concerns that commenters raised. For example, in defining ''site,'' the Commission substitutes the term ''eligible support structure,'' a defined term, for the proposed use of the word ''facility,'' which is not defined in § 1.6100 of its rules. Further, the *NPRM* also proposed specific alternatives. All localities that allege ambiguities raised meaningful comments and opined on the specific rule changes that the Commission adopts in this document.

38. Third, Local Governments claim that any collocation policy modification should be achieved through 47 U.S.C. 332. The Commission disagrees. Congress has directed the Commission to ''encourage the rapid deployment of telecommunications services,'' including with section 6409(a), in which Congress specifically addressed modifications of an existing tower or base station ''[n]otwithstanding'' Section 332. And the Commission has relied on section 6409(a) to require a streamlined review process for modifications of existing towers or base stations. Similar to the Commission's actions in the 2014 Infrastructure Order, the rules it promulgates in this document ''will serve the public interest by providing guidance to all stakeholders on their rights and responsibilities under the provision, reducing delays in the review process for wireless infrastructure modifications, and facilitating the rapid deployment of wireless infrastructure, thereby promoting advanced wireless broadband services.''

39. Finally, Western Communities Coalition argues that the comment cycle is unusually short. The Administrative Procedure Act and the Commission's rules require only that commenters be afforded reasonable notice of the proposed rulemaking. Western Communities Coalition provides no basis for its view that more than the 30-day time period following **Federal Register** publication (20 days for comments and 10 days for reply comments), was inadequate here, given that the *NPRM* raised a narrow set of issues that had been subject to prior public input in response to WIA's petition for declaratory ruling and petition for rulemaking. And no commenter argues that it was prejudiced by the comment cycle's length. Indeed, several commenters, including the Western Communities Coalition, have been considering these issues on the record since at least October 2019. Claims that the *NPRM* is vague or that commenters have had insufficient time to comment are therefore contradicted by the record.

40. Accordingly, the Commission revises the compound expansion provision in § 1.6100(b)(7)(iv) and the definition of ''site'' in § 1.6100(b)(6). The Commission finds that the revisions it adopts in this document will streamline the use of existing infrastructure for the deployment of 5G and other advanced wireless networks while preserving localities' ability to review and approve an eligible support structure.

41. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. Pursuant to the RFA, a Final Regulatory Flexibility Analysis is set forth in the *Report and Order.*

42. *Paperwork Reduction Act.* This *Report and Order* does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

43. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Analysis

A. Need for, and Objectives of, the Report and Order

44. In the *Report and Order,* the Commission continues its efforts to reduce regulatory barriers to infrastructure deployment by further streamlining the state and local government review process for modifications to existing wireless towers or base stations under section 6409(a) of the Spectrum Act of 2012. The Commission's decision will encourage the use of existing infrastructure, where efficient, to accelerate deployment of 5G and other advanced networks, which will enable economic opportunities across the nation. More specifically, the *Report and Order* revises the Commission's rules to provide that the modification of an existing tower outside the public rights-of-way that entails ground excavation or deployment of transmission equipment up to 30 feet in any direction outside the site will be eligible for streamlined processing under section 6409(a) review. The *Report and Order* clarifies that the site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site. It also revises the Commission's rules to clarify that a site's current boundaries are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a state or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process.

45. Our rule revisions reflect the recent recognition of 30 feet as an appropriate standard in the federal historic preservation context and the changes in the collocation marketplace, which is lacking space for collocations. This standard is consistent with the current collocation marketplace and with the threshold adopted in the Wireless Facilities NPA and recently included in the Amended Collocation NPA. Further, at least ''eight states have passed laws that expressly permit compound expansion within certain limits . . . under an exempt or expedited review process.'' Most of these laws allow expansion beyond 30 feet from the approved site.

B. Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)

46. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

47. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

48. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

49. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules and adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

50. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

51. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

52. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

53. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

54. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by our actions. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

55. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications'', which consists of all such firms with annual receipts of $35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49, 999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

56. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service, Millimeter Wave Service, Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. There are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services. The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this SBA category and the associated size standard, the Commission estimates that a majority of

fixed microwave service licensees can be considered small.

57. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies discussed herein. We note, however, that the microwave fixed licensee category includes some large entities.

58. *FM Translator Stations and Low Power FM Stations.* FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICs Code as licensees of radio stations. This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard which consists of all radio stations whose annual receipts are $41.5 million dollars or less. U.S. Census Bureau data for 2012 indicate that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard we conclude that the majority of FM Translator Stations and Low Power FM Stations are small.

59. *Location and Monitoring Service (LMS).* LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $15 million. A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $3 million. These definitions have been approved by the SBA. An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

60. *Multichannel Video Distribution and Data Service (MVDDS).* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years. These definitions were approved by the SBA. On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses. Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.

61. *Multiple Address Systems.* Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, Profit-based Spectrum use, the size standards established by the Commission define ''small entity'' for MAS licensees as an entity that has average annual gross revenues of less than $15 million over the three previous calendar years. A ''Very small business'' is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than $3 million over the preceding three calendar years. The SBA has approved these definitions. The majority of MAS operators are licensed in bands where the Commission has implemented a geographic area licensing approach that requires the use of competitive bidding procedures to resolve mutually exclusive applications.

62. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 Economic Area market area MAS authorizations. The Commission's licensing database also indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service. In 2001, an auction for 5,104 MAS licenses in 176 EAs was conducted. Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

63. With respect to the second category, Internal Private Spectrum use consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The closest applicable definition of a small entity is the ''Wireless Telecommunications Carriers (except Satellite)'' definition under the SBA size standards. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this category, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of firms that may be affected by our action can be considered small.

64. *Non-Licensee Owners of Towers and Other Infrastructure.* Although at one time most communications towers were owned by the licensee using the tower to provide communications service, many towers are now owned by third-party businesses that do not provide communications services themselves but lease space on their towers to other companies that provide communications services. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200

feet in height or within the glide slope of an airport must register the tower with the Commission's Antenna Structure Registration (''ASR'') system and comply with applicable rules regarding review for impact on the environment and historic properties.

65. As of March 1, 2017, the ASR database includes approximately 122,157 registration records reflecting a ''Constructed'' status and 13,987 registration records reflecting a ''Granted, Not Constructed'' status. These figures include both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require ASR registration, we do not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners that would be subject to the rules on which we seek comment. Moreover, the SBA has not developed a size standard for small businesses in the category ''Tower Owners.'' Therefore, we are unable to determine the number of non-licensee tower owners that are small entities. We believe, however, that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands. In addition, there may be other non-licensee owners of other wireless infrastructure, including Distributed Antenna Systems (DAS) and small cells that might be affected by the measures on which we seek comment. We do not have any basis for estimating the number of such non-licensee owners that are small entities.

66. The closest applicable SBA category is All Other Telecommunications, and the appropriate size standard consists of all such firms with gross annual receipts of $38 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million and 15 firms had annual receipts of $25 million to $49, 999,999. Thus, under this SBA size standard a majority of the firms potentially affected by our action can be considered small.

67. *Personal Radio Services.* Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided for in other services. Personal radio services include services operating in spectrum licensed under Part 95 of our rules. These services include Citizen Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service. There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. All such entities in this category are wireless, therefore we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which the SBA's small entity size standard is defined as those entities employing 1,500 or fewer persons. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. We note however, that many of the licensees in this category are individuals and not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities that may be affected by our actions in this proceeding.

68. *Private Land Mobile Radio Licensees.* Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engag*ed in radiotelephone communications.* The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR Licensees are small entities.

69. According to the Commission's records, a total of approximately 400,622 licenses comprise PLMR users. There are a total of approximately 3,577 PLMR licenses in the 4.9 GHz band; 19,359 PLMR licenses in the 800 MHz band; and 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz. The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

70. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Because of the vast array of public safety licensees, the Commission has not developed a small business size standard specifically applicable to public safety licensees. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, we include under public safety services the number of government entities affected. According to Commission records, there are a total of approximately 133,870 licenses within these services. There are 3,577 licenses in the 4.9 GHz band, based on an FCC Universal Licensing System search of September 18, 2020. We estimate that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

71. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA has established a small business size standard for this category as firms having $41.5 million or less in annual receipts. U.S. Census Bureau data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than $25 million per year and 17 with annual receipts between $25 million and $49,999,999 million. Therefore, based on the SBA's size standard the majority of such entities are small entities.

72. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database as of January 2018, about 11,261 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial AM radio stations to be 4,580 stations and the number of commercial FM radio stations to be 6,726, for a total number of 11,306. We note the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,172. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

73. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a ''small business,'' an entity may not be dominant in its field of operation. We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

74. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

75. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less, and 25 had annual receipts between $25,000,000 and $49,999,999. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

76. The Commission has estimated the number of licensed commercial television stations to be 1,377. Of this total, 1,258 stations (or about 91 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA/Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 384. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,300 low power television stations, including Class A stations (LPTV) and 3,681 TV translator stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

77. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

78. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).

79. *BRS*—In connection with the 1996 BRS auction, the Commission established a small business size

standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard). After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

80. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

81. *EBS*—Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to U.S. Census Bureau data, the Commission's Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

82. The excavation or deployment boundaries of an eligible facilities request pose significant policy implications associated with the Commission's rules implementing section 6409(a) of the Spectrum Act of 2012. The Commission believes that the rule changes in the *Report and Order* provide certainty for providers, state and local governments (collectively, localities), and other entities interpreting these rules. We do not believe that our resolution of these matters will create any new reporting, recordkeeping, or other compliance requirements for small entities that will be impacted by our decision.

83. More specifically, the amendment of § 1.6100(b)(7)(iv) to allow a modification of an existing site that entails ground excavation or deployment of up to 30 feet in any direction outside a tower's site does not create any new reporting, recordkeeping, or other compliance requirements for small entities. Rather, it permits an entity submitting an eligible facilities request to undertake limited excavation and deployment of up to 30 feet in any direction. While the Commission cannot quantify the cost of compliance with the changes adopted in the *Report and Order,* small entities should not have to hire attorneys, engineers, consultants, or other professionals to in order to comply. Similarly, the revised definition of ''site'' adopted in the *Report and Order* addresses localities' concerns of ''unending accretion of [a] site by repeated applications for expansion'' by ensuring that a locality has reviewed and approved the site that is the subject of the eligible facilities request, and recognizes that the site may have changed since the locality initially approved it. This action does not create any new reporting, recordkeeping, or other compliance requirements for small entities. Instead, it prevents entities from having to file, and localities from having to receive and review, repeated applications for site excavation or deployments. Further, our actions providing clarity on the definitions of site and substantial change pursuant to the Commission's rules implementing section 6409(a) requirements should benefit all entities involved in the wireless facility modification process.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

84. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

85. In the *Report and Order,* the Commission clarifies and amends its rules associated with wireless infrastructure deployment to provide more certainty to relevant parties and enable small entities and others to more effectively navigate state and local application processes for eligible facilities requests. These changes, which broaden the scope wireless facility modifications that are eligible for streamlined review by localities under the Commission's rules implementing section 6409(a), should reduce the economic impact on small entities that deploy wireless infrastructure by reducing the costs and delay associated with the deployment of such infrastructure. The Commission's efforts to reduce regulatory barriers to infrastructure deployment by further streamlining the review process by localities for modifications to existing wireless towers or base stations under section 6409(a) should also reduce the economic impact on small localities by reducing the administrative costs associated with the review process.

86. The Commission considered but declined to adopt the industry's ''hybrid'' definition of ''site.'' Adopting that proposal would risk permitting a tower owner to file an eligible facilities request even if it may have substantially increased the size of a tower site prior to the adoption of this *Report and Order* and without any necessary approval from a locality. It agreed with localities' concerns on the industry's proposed definition, and found that our revision addresses them by ensuring that a locality has reviewed and approved the eligible support structure that is the subject of the eligible facilities request outside of the section 6409(a) process, while recognizing that the boundaries may have changed since the locality initially approved the eligible support structure. It also considered and rejected a proposal that would risk creating a loophole whereby a tower owner could use the issuance of a permit—which does not necessarily involve a locality's review of the eligible support structure, and thus would not necessarily provide an opportunity for the locality to take into account an increase in the size of the site associated with that structure—to justify expansion of the site without proper local approval. On balance, the Commission believes the revisions adopted in the *Report and Order* best achieve the Commission's goals while at the same time minimize or further reduce the economic impact on small entities, including small state and local government jurisdictions.

87. The Commission also considered, but declined to adopt, NATOA and Local Governments proposal that, to the extent the Commission revises it ''substantial change'' definition, the compound expansion standard should be ''the lesser of the following distance[s] from the current site (not including easements related to the site): a. 20% of the length or width of the current site measured as a longitudinal or latitudinal line from the current site to the excavation or deployment; or b. 30 feet.'' The Commission declined to adopt this proposal because it concluded that, on balance, the potential problems it could create outweigh the potential benefits it could achieve. The Commission reasoned that the standard of ''20% of the length or width of the current site'' would be difficult to administer, given that a site boundary is not necessarily a symmetrical shape. In addition, while the record supports the determination that a 30-foot expansion would be sufficient to accommodate minor equipment additions, the record does not provide support for the determination that the ''20%'' standard would accomplish this goal. Moreover, adopting the ''20%'' proposal would provide limited additional benefit in addressing the concern raised by NATOA and Local Governments. Because a small tower site typically is associated with a small tower that has limited space for additional antennas, it is unlikely that operators would need to place a significant amount of additional equipment in an area outside the site boundaries. In addition, any modification to an existing tower that involves excavation or deployment within the 30-foot expanded area will be subject to the other criteria in the Commission's rules for determining whether there is a substantial change that does not warrant streamlined treatment under section 6409(a). Those criteria, which the Commission does not alter in this document, provide further limitation on the size or scope of a modification that involves excavation or deployment within 30 feet of the site boundaries.

Ordering Clauses

88. Accordingly, *it is ordered,* pursuant to sections 1, 4(i)–(j), 7, 201, 253, 301, 303, 309, 319, and 332 of the Communications Act of 1934, as amended, and section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, as amended, 47 U.S.C. 151, 154(i)–(j), 157, 201, 253, 301, 303, 309, 319, 332, 1455, that this *Report and Order is* hereby *adopted.*

89. *It is further ordered* that this *Report and Order shall be effective* 30 days after publication in the **Federal Register**.

90. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

91. *It is further ordered* that this *Report and Order shall be* sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Communications equipment, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461, unless otherwise noted.

■ 2. Amend § 1.6100 by revising paragraphs (b)(6) and (b)(7)(iv) to read as follows:

§ 1.6100 Wireless Facility Modifications.

* * * * *

(b) * * *

(6) *Site.* For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process.

(7) * * *

(iv) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;

* * * * *

[FR Doc. 2020–25144 Filed 12–2–20; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[PS Docket No. 18–261 and 17–239, GN Docket No. 11–117; FCC 19–76; FRS 17201]

Implementing Kari's Law and RAY BAUM'S Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service

AGENCY: Federal Communications Commission.