DEPARTMENT OF PLANNING &
ECONOMIC DEVELOPMENT
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CITY OF SAINT PAUL
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DATE: March 25, 2015

TO: Planning Commission

FROM: Comprehensive Planning Committee

RE: Cellular Telephone Antenna Zoning Study

ISSUES

The Federal Communications Commission (FCC) published its Final Rules on Wireless Infrastructure on January 8, 2015. The Final Rules allow certain automatic size increases not contemplated by the City's regulations, as well as establishing parameters for review. Zoning Code amendments may be advisable in order to manage the regulatory changes contained in the Final Rules. Additionally, the Zoning Code treats cellular facilities on residential structures in residential districts differently than on other types of structures with similar or greater community impacts.

BACKGROUND

The FCC occasionally adopts rules and regulations that interpret and implement federal law. FCC rules take precedence over local regulation such as the City's Zoning Code. The recently released Final Rules address several wireless infrastructure issues: interpretation of terms in the *Spectrum Act* regarding wireless facility collocations, reevaluation of FCC's previous *2009 Declaratory Ruling* "shot clock" provision regarding processing timelines, exemptions from National Environmental Protection Act (NEPA) and National Historic Preservation Act (NHPA) reviews for small cell sites, and exemptions from environmental notification for temporary towers. The *Spectrum Act* interpretation is of greatest significance to zoning regulations. The background section below addresses the FCC's *Spectrum Act* interpretation, its updated "shot clock" interpretation, and the potential effect on the City's Zoning Code. It also addresses the question of whether all buildings in residential, traditional neighborhood, and business districts should be treated the same as residential buildings in residential districts with regard to cellular antenna provisions and conditional use permits.

Spectrum Act Interpretation

The *Spectrum Act* is a small section within the 102-page *Middle Class Tax Relief and Job Creation Act of 2012*, as follows:

> **SEC. 6409. WIRELESS FACILITIES DEPLOYMENT.**
>
> (a) FACILITY MODIFICATIONS.—
>
> (1) IN GENERAL.—Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) 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.
> (2) ELIGIBLE FACILITIES REQUEST.—For purposes of this subsection, the term "eligible facilities request" means 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.

Among other aims, the FCC desired to determine the meanings of "existing wireless tower or base station" and "substantially change the physical dimensions." The Final Rules determined that an "existing wireless tower or base station" includes not only towers built expressly to support wireless facilities, but also other structures (such as commercial or residential buildings, or utility poles) that support wireless facilities. The Final Rules also determined that a modification that "substantially changes the physical dimensions" is generally one that does any of the following:

(1) increases the height of a tower outside the public rights-of-way by more than 10% or 20 feet, whichever is greater, or protrudes from the edge of said tower by more than 20 feet (20 feet height increase is measured from top of existing antennas to bottom of new antennas; Note: current technology generally consists of 6- or 8-foot tall antennas);
(2) increases a base station's (building's or utility pole's) height by more than 10% or 10 feet, whichever is greater, or protrudes from the edge of said structure by more than 6 feet (height increase measured from height of base station, presumably to top of new antennas);
(3) defeats the existing concealment elements of a tower or base station (e.g. church steeple enclosure or painting to match the building); or
(4) does not comply with conditions of the facility's prior approvals, besides those restricting height or size.

Local government approval of such eligible facilities requests can be conditioned only on compliance with building codes and other standards reasonably related to health and safety. Aesthetics cannot be taken into account, except with regard to maintaining existing concealment elements.

Notably, the *Spectrum Act* does not apply to local governments acting in their proprietary capacities, meaning that the City retains its usual discretion to allow or reject wireless facilities on City-owned land such as rights-of-way or parks.

"Shot Clock" Provision: Effect on City Reviews

In 2009, the FCC declared that local governments have 150 days to process applications for new wireless facilities and 90 days to process collocations, unless an extension is mutually agreed to. The Final Rules have shortened the review time period for collocations that are covered by the *Spectrum Act* to 60 days. Additionally, the Final Rules specify that such application that is not reviewed within 60 days is automatically "deemed granted." The 60-day review period is intended only to allow a local government to determine whether the application is an "eligible

facility." Though the Final Rules do not specify that *Spectrum Act*-eligible facilities be reviewed administratively, the limited scope of review and the short timeline essentially require administrative reviews.

FCC Rules' Effect on Zoning Code

The Zoning Code contains several regulations affected by the Final Rules and their allowance for "automatic" future collocations.

First, Sec. 65.310(a) requires a conditional use permit for cellular antennas on a residential structure less than 60 feet high in residential districts, but none of the evaluation criteria account for the new reality that allowing one set of antennas in a particular setting on the structure could automatically allow for future antennas to be placed in different settings on the same structure. One solution for this issue is to simply state that conditional use permit reviews shall take into account not only the subject application's request, but also any potential future "automatic" collocations. Additionally, in its conditional use permit review the City could consider adding specific conditions to address placement on a structure (e.g. set back at least 10' from the front façade parapet), concealment requirements (e.g. painted to match the rooftop equipment canopy), or other issues of theoretical concern for collocations, even if they are not presented by the subject application.

Second, Sec. 65.310(d)(3) refers to antennas "blend(ing) into the surrounding environment" with paint color or camouflaging treatments, which is similar to the "concealment" language used in the Final Rules. Inserting the term "concealment" would make clear the intent of applicability for the Final Rules' requirement of future collocations to maintain concealment elements.

Finally, there are four (4) Zoning Code clauses that involve cellular antenna height, addressed individually below:

- Sec. 65.310(b) allows antennas in residential, traditional neighborhood, and OS—B3 and B5 districts to extend no more than 15 feet above the structure to which it is attached, and no more than 40 feet above such structure in the B4 district. The Final Rules would not allow automatic collocations exceeding these height regulations, except on structures greater than 150 feet in height. No amendment of this language is recommended.
- Sec. 65.310(d)(1) generally restricts new freestanding towers in residential, traditional neighborhood, and business districts to 75 feet in height, or 100 feet if they are designed to carry two (2) antennas. (The height limits can be exceeded if the applicant demonstrates that the surrounding topography, structures, or vegetation make the limits impractical.) The Final Rules would allow for a tower designed to carry two (2) antennas that is currently built to 100 feet to be further extended by about 28 feet (20-foot separation + 8-foot high antennas), provided that it does not need replacement for structural reasons. Clearly, the Zoning Code intends for 100 feet to be an absolute height limit, unless there are site-specific impracticalities. One solution for this issue is to eliminate the explicit allowance for antennas designed to carry multiple antennas to exceed 75 feet, knowing that the Final Rules allow a similar height increase (approximately 28 feet).
- Sec. 65.310(d)(2) requires antennas on freestanding poles in residential, traditional neighborhood, and business districts to be set back by the antenna height + 10 feet from

the nearest residential structure. Since the Final Rules allow such poles to be increased in height by approximately 28 feet, it may be appropriate to increase the setback from residential structures accordingly.

- Sec. 65.310(e) limits antennas on freestanding poles in industrial districts to 150 feet in height and requires setbacks from the nearest residential structure of the antenna height + 10 feet. Since the Final Rules allow such poles to be increased in height by approximately 28 feet, it may be appropriate to decrease the allowed height and increase the setback from residential structures accordingly.

Conditional Use Permits for Cellular Antennas: History and Considerations

A conditional use permit is a regulatory tool for permitting uses in certain contexts that may be inappropriate in other contexts. With regard to cellular antennas, it allows for balancing of service need and community impact considerations. Due to the uncertainty presented and additional time required for processing, proposed cellular antenna sites requiring conditional use permit review are inherently discouraged relative to sites that can be approved administratively.

Initially, when cellular antennas were first recognized in the Zoning Code in 1993 they were permitted in all districts in a similar manner as today with three main exceptions: no conditional use permits, a demonstration of need was required for all applications, and freestanding poles were only permitted if there were no buildings of sufficient height in the area. There was also no 25 foot height increase given to freestanding poles in non-industrial districts that could accommodate multiple carriers. Overall, the effect of the 1993 code language was to encourage locating on buildings of any height and any land use type rather than on poles.

Currently, the Zoning Code requires a conditional use permit for cellular antennas on a residential structure less than 60 feet high in residential districts and for a new freestanding pole in any non-industrial district. A "residential structure" refers only to single-use residential structures, which in residential districts are far more predominant than mixed-use residential structures. No conditional use permit is required to place cellular antennas on residential structures of any height in other zoning districts. The current code's overall effect is to encourage locating cellular antennas on existing poles, taller buildings of all types, and shorter buildings that are either not purely residential or are not zoned residential.

The conflict between service need and community impact is most likely to arise in less dense, generally residential parts of the city with few tall buildings or structures. In those areas, some of the best locations for reduced community impact are atop the tallest existing buildings at the intersections of major streets. The tallest buildings in these contexts also tend to be the sites preferred by service providers. Such buildings are sometimes residential, sometimes commercial, and sometimes mixed use, as illustrated in the figures below. Current code encourages seeking non-residential or non-residentially zoned buildings in these locations, even if they are the shortest structures in the area.

Figure 1: Marshall/Cleveland Intersection (map with photos of each quadrant)

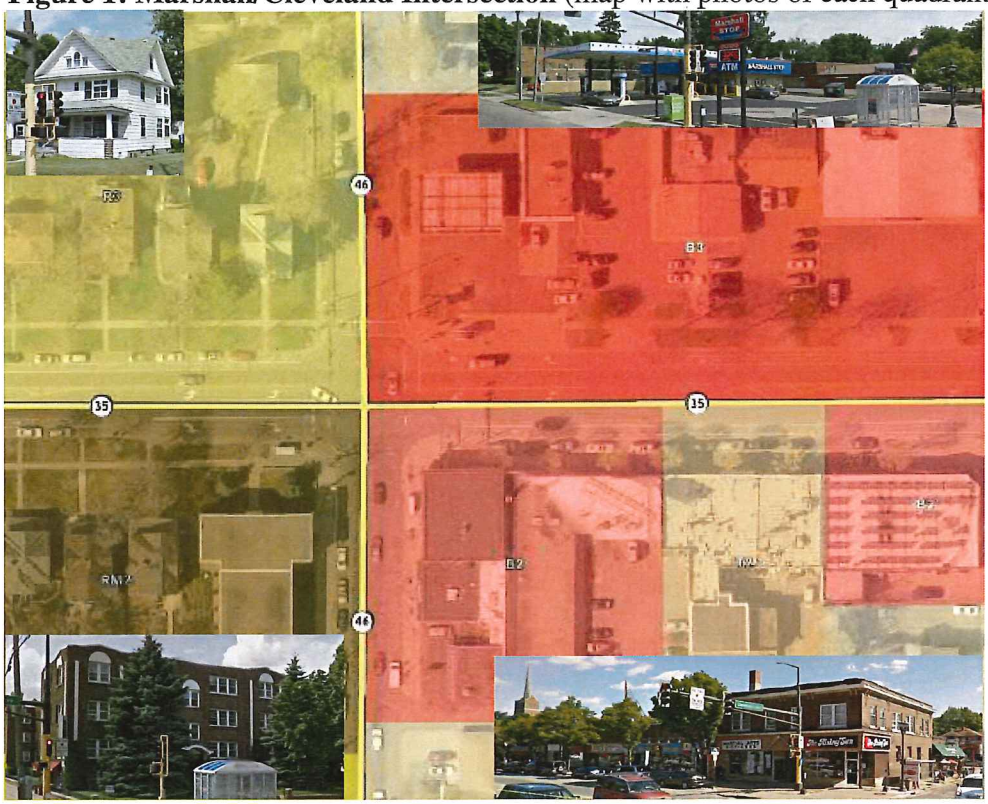

Figure 2: Grand/Dale Intersection (map with photos of each quadrant)

Figure 3: Maryland/White Bear Intersection (map with photos of each quadrant)

Figure 4: 3rd/Bates Intersection (map with photos of each quadrant)

In each of the above examples, the current code permits locating cellular antennas on the shortest building at the intersection, which would have the greatest visual impact on the surrounding area. In the case of Figure 3, the current code also permits locating antennas atop a single-family house at the northeast corner that is zoned B2.

It is recommended that the Zoning Code incentivize locating cellular antennas on the tallest buildings in the city's more residential areas without regard to the building's land use type. It is the visibility of antennas, which is experienced in the area surrounding the building rather than within the building, that can present a negative land use impact. Accordingly, the occupancy or zoning of the building itself are not significant to land use impact from cellular antennas; building height, on the other hand, is very significant to land use impact of such antennas. At major intersections in the city's more residential areas, the tallest buildings are often about 35 to 40 feet tall, but can approach 50 feet on RM2-zoned properties. However, buildings of approximate 35-foot height can also be found away from such major intersections in places of greater potential visual impact given the context. In order to properly incentivize cellular antenna site locations and allow for context-sensitive review, it is recommended that conditional use permits be required for locating cellular antennas on all buildings under 45 feet in height.

PUBLIC HEARING TESTIMONY

The Planning Commission held a public hearing on March 13, 2015 and left the record open for written comments through March 16, 2015. Written comments were received from the District 11 Council and AT&T (see attached). Representatives from T-Mobile and AT&T spoke at the hearing. The District 11 Council expressed support for the proposed amendments. The other testimony is summarized below.

AT&T opposes several of the proposed amendments because they would effectively remove the benefit and contradict the intent of the FCC's new rules implementing the *Spectrum Act*. The proposed amendments in question are to Sec. 65.310(a) (accounting for future collocations in Planning Commission review of conditional use permits); Sec. 65.310(d)(1) (elimination of a 25' height increase to freestanding poles in residential, traditional neighborhood, and business districts if they are built to accommodate two users); and Sec. 65.310(e) (reducing maximum freestanding pole heights in industrial districts). AT&T states that reducing the maximum freestanding pole heights would severely limit the ability to collocate multiple cellular antennas on new freestanding poles, that the amendments would lead to a need for more freestanding poles due to collocation limitations, and that carriers would be impaired or prohibited in their ability to provide reliable service or increase network capacity. AT&T suggests that proposed amendments to Sec. 65.310(d)(1) and Sec. 65.310(e) be rejected. AT&T also suggests deletion of the proposed additional language for 65.310(a) and replacement with a statement affirming that conditional use permits are not required for eligible facility modifications.

T-Mobile notes that there is already protection given to local governments through historic review, and requests that the ambiguity and subjectivity of conditional use permits be rejected in favor of objective set numbers addressing setbacks and height.

ANALYSIS OF TESTIMONY

The section below analyzes the main issues raised by public testimony.

1. Issue: Amending the Zoning Code in a manner that restricts rather than promotes wireless facility deployment is contrary to the intent of the FCC Final Rules.

   Response: The FCC Final Rules implementing the *Spectrum Act* address modifications of wireless infrastructure on existing towers or base stations. The FCC specifically declined to regulate sites that do not yet contain wireless infrastructure, thereby leaving such authority with state and local governments. The FCC does not mandate nor express the assumption that local regulation of first-time facilities would be frozen in time and never change in response to legitimate local land use concerns. No revision to the proposed amendments is recommended.

2. Issue: Reducing maximum freestanding pole heights would severely limit the ability to collocate and would impair or prohibit the ability of carriers to improve their networks.

   Response: The proposed amendments provide the same eventual permitted pole heights and do not prohibit collocations; therefore, they would not generally limit the ability to collocate. However, for freestanding poles in residential, traditional neighborhood, and business districts, those designed for multiple carriers at heights of 100 feet would need to be built in two phases rather than all at once, which could discourage collocations by adding extra process, even if no certainty of outcome is lost. Since collocations on existing poles generally have a lesser negative impact on the surrounding community than multiple freestanding poles, it is recommended that the final sentence of Sec. 65.310(d)(1) be maintained rather than deleted. Maintaining Sec. 65.310(d)(1) in full would have the negative impact of allowing freestanding poles built for multiple carriers to eventually be approximately 128' in height rather than 100'. Avoiding multiple poles is a more positive outcome than avoiding the additional height. No revision to Sec. 65.310(e), regarding freestanding pole heights in industrial districts, is recommended. With these revisions, the proposed amendments regarding pole heights have no significant negative effect on the ability of carriers to improve their networks.

3. Issue: Conditional use permits should not be required for eligible facility modifications.

   Response: The proposed amendments do not require conditional use permits for eligible facility modifications. The federal law supersedes local zoning codes, which is affirmed by proposed language in Sec. 65.310(a). No further amendments to this section are recommended.

4. Issue: Local governments are already afforded protection through historic review.

   Response: The FCC Final Rules supersede local government regulation such as Saint Paul Heritage Preservation Commission (HPC) review of proposed eligible facility collocations in *locally* designated historic districts and sites. That is, it appears that eligible collocations that would normally have required HPC review will no longer

require it. Such collocations on *nationally* designated properties receive advisory review through the National Environmental Protection Act and the National Historic Preservation Act with regard to the effect on the property's historic designation, but this process does not include local regulatory control. The advisory review is only with regard to historic considerations (not other local government considerations), and is in effect only within a certain distance of nationally designated historic resources, not throughout the city.

5. Issue: Expansion of the conditional use permit process to residential buildings under 60' height in traditional neighborhood and business districts should be rejected, either all together or in favor of objective numerical standards. An expanded CUP process is burdensome and makes wireless facility provision more difficult.

   Response: Residential buildings under 60' height in traditional neighborhood and business districts exist in a wide variety of settings. In some settings, such as where there are few tall structures nearby and cellular facility provision is difficult, it may be appropriate to permit new antennas atop a building with minimal conditions. In other settings, neighborhood protection may take higher precedence and lead to denial or more restrictive conditions for a request. The Zoning Code contains specific standards and conditions to apply to such an application. To apply strict numerical standards rather than a CUP review process would require the code language to address the most restrictive situation – the CUP process, on the other hand, would allow for less restrictive conditions in the situations where it is appropriate. It is appropriate to consider collocations now allowed by federal law when reviewing CUPs for initial installation, since that is effectively what the City could be approving.

COMPREHENSIVE PLAN ANALYSIS

The Comprehensive Plan refers to the importance of ensuring investments in local and regional infrastructure supportive of economic development, as well as the importance of promoting aesthetics and development standards. There are also two clauses of the Comprehensive Plan's Land Use Chapter with more specific guidance: Strategy 2.23 calls for site plan review standards in the I1, I2, and I3 districts that enhance the aesthetic quality of the district, and Strategy 3.7 calls for using the Zoning Code to make development compatible with the existing and planned character of a neighborhood or other area of the city.

COMPREHENSIVE PLANNING COMMITTEE RECOMMENDATION

The CPC recommends that the Planning Commission approve the attached Draft Resolution recommending Zoning Code amendments to the Mayor and City Council.

Attachments

1. Draft Planning Commission Resolution
2. Revised Proposed Zoning Code Amendments
3. Written Testimony
4. FCC Final Rules

city of saint paul
planning commission resolution
file number _____
date _____

WHEREAS, the Saint Paul Zoning Code, found in chapters 60 through 69 of the Saint Paul Legislative Code, is established to promote and to protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community; and

WHEREAS, Section 61.801(a) of the Zoning Code calls for periodic review of said code to reflect current city policies, to address current technology and market conditions, and to bring the Zoning Code up-to-date; and

WHEREAS, the federal rules regarding local government regulation of cellular telephone antennas have recently been changed and clarified in a manner that has caused the Zoning Code to become outdated; and

WHEREAS, when cellular telephone antennas and associated equipment are placed upon existing buildings in residential, traditional neighborhood, and business districts, the building's height is more closely related to community impact than the building's use or specific zoning district; and

WHEREAS, buildings under 45 feet in height within residential, traditional neighborhood, and business districts exist in a variety of contexts that can present significantly different community impacts from cellular telephone antennas upon such buildings; and

WHEREAS, the Saint Paul Planning Commission finds the proposed text amendments to be supported by the policies of the Comprehensive Plan; and

WHEREAS, the Saint Paul Planning Commission held a public hearing on March 13, 2015 regarding the potential amendments;

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the following proposed amendments to the Legislative Code be recommended for approval by the Mayor and Council of the City of Saint Paul:

moved by _____
seconded by _____
in favor _____
against _____

Note: Existing language to be deleted shown by ~~strikeout~~. New language to be added shown by underlining.

Sec. 65.310. Antenna, cellular telephone.

A device consisting of metal, carbon ~~fibre~~ fiber, or other electromagnetically conductive rods or elements, usually arranged in a circular array on a single supporting pole or other structure, and used for the transmission and reception of radio waves in wireless telephone communications.

Standards and conditions:

(a) In residential, traditional neighborhood and business districts, a conditional use permit is required for cellular telephone antennas on a ~~residential structure~~building less than ~~sixty (60)~~ forty-five (45) feet high~~. In residential, traditional neighborhood and business districts, a conditional use permit is required for cellular telephone antennas~~ or on a freestanding pole, except for existing utility poles. In residential and traditional neighborhood districts, existing utility poles to which cellular telephone antennas are attached shall be at least sixty (60) feet high. Conditional use permit review for such antennas will take into account not only the request made by the application, but also any future eligible facility modifications allowed under 47 Code of Federal Regulations (CFR) ~~part 1~~§1.40001, such as antennas of a more obtrusive design or placement than the subject application. A conditional use permit is not required for any eligible facility modification allowed under 47 CFR ~~part 1~~§1.40001.

(b) In residential, traditional neighborhood, and OS—B3 and B5 business districts, the antennas shall not extend more than fifteen (15) feet above the structural height of the structure to which they are attached. In B4 business and industrial districts, the antennas shall not extend more than forty (40) feet above the structural height of the structure to which they are attached.

(c) For antennas proposed to be located on a ~~residential structure~~building less than ~~sixty (60)~~ forty-five (45) feet high in residential, traditional neighborhood, and business districts, or on a new freestanding pole in residential, traditional neighborhood, and business districts, the applicant shall demonstrate that the proposed antennas cannot be accommodated on an existing freestanding pole~~,~~ or an existing ~~residential~~ structure at least ~~sixty (60)~~ forty-five (45) feet high~~, an existing institutional use structure, or a business building~~ within one-half (½) mile radius of the proposed antennas due to one (1) or more of the following reasons:

(1) The planned equipment would exceed the structural capacity of the existing pole or structure.

(2) The planned equipment would cause interference with other existing or planned equipment on the pole or structure.

(3) The planned equipment cannot be accommodated at a height necessary to function reasonably.

(4) The owner of the existing pole, structure or building is unwilling to co-locate an antenna.

(d) In residential, traditional neighborhood and business districts, cellular telephone antennas to be located on a new freestanding pole are subject to the following standards and conditions:

(1) The freestanding pole shall not exceed seventy-five (75) feet in height, unless the applicant demonstrates that the surrounding topography, structures, or vegetation renders a seventy-five-foot pole impractical. Freestanding poles may exceed the above height limit by twenty-five (25) feet if the pole is designed to carry two (2) antennas. [Restored]

(2) Antennas shall not be located in a required front or side yard and shall be set back one (1) times the height of the antenna plus ~~ten (10)~~ thirty-eight (38) feet from the nearest residential ~~structure~~building.

(3) The antennas shall be designed where possible to blend into the surrounding environment through concealment elements such as the use of color and camouflaging architectural treatment. Drawings or photographic perspectives showing the pole and antennas shall be provided to the planning commission to determine compliance with this provision.

(4) In residential and traditional neighborhood districts, the pole shall be on institutional use property at least one (1) acre in area. In business districts, the zoning lot on which the pole is located shall be within contiguous property with OS or less restrictive zoning at least one (1) acre in area.

(e) In industrial districts, cellular telephone antennas on a freestanding pole shall not exceed ~~one hundred fifty (150)~~ one hundred twenty-two (122) feet in height, shall not be located in a required front or side yard, and shall be set back one (1) times the height of the antenna plus ~~ten (10)~~ thirty-eight (38) feet from the nearest residential structure.

(f) Antennas located in historic districts shall be subject to review and approval of the heritage preservation commission.

(g) Freestanding poles shall be a monopole design.

(h) Transmitting, receiving and switching equipment shall be housed within an existing structure whenever possible. If a new equipment building is necessary, it shall be permitted and regulated as an accessory building, section 63.500, and screened from view by landscaping where appropriate.

(i) Cellular telephone antennas that are no longer used for cellular telephone service shall be removed within one (1) year of nonuse.

Butler, Sonja (CI-StPaul)

From: Michael Jon Olson <michaeljon@hamlinemidway.org>
Sent: Wednesday, February 18, 2015 10:41 AM
To: Dermody, Bill (CI-StPaul)
Subject: Cellular Telephone Antennas Text Amendments
Attachments: ENS+CellularTelephonePH03-13-15.pdf

Bill,

Hamline Midway Coalition/District Council 11 fully SUPPORTS the proposed Cellular Telephone Antennas Text Amendments as described in the attached public notice.

Thank you for your consideration.

Michael Jon Olson
Executive Director
Hamline Midway Coalition/District Council 11
michaeljon@hamlinemidway.org
www.hamlinemidway.org
651-494-7682

Comments on Proposed Amendments to St. Paul Cell Tower Zoning Ordinance

- Section 6409 of the federal Spectrum Act provides that "a State or local government may not deny, and must approve, any eligible facilities request for a modification of an existing wireless tower or base state that does not substantially change the physical dimensions of such tower of base station." Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 § 6409(a), 126 Stat. 156 (2012)

- The FCC recently adopted rules implementing section 6409. 47 C.F.R. Part 1, subpart CC. Among other things, those rules spell out what modifications of any existing wireless tower or base station constitute eligible facility modifications which a State or local government is required to approve.

- The stated purpose of the proposed revisions to St. Paul's cell tower zoning ordinance is to conform that ordinance to the new FCC rules. Consistent with this stated purpose, the following sentence would be added to section 65.310(a): "A conditional use permit is not required for any eligible facility modification allowed under 47 CFR Part 1. "

- However, other proposed revisions would effectively remove the benefit of this language and undermine the intent of section 6409 and the FCC's implementing rules:

    - Language would be added to section 65.310 allowing the review of a proposed conditional use permit for a new structure to "take into account" future modifications to that structure that would be allowed under 47 C.F.R. Part 1.

    - Section 65.310(d)(1) would be revised to eliminate the allowance for new freestanding poles designed to carry 2 antennas to exceed 75 feet by up to 25 feet. This is being proposed to eliminate the possibility that a later modification to extend the height of the pole by 28 feet (which the City would be required to allow under the FCC's rules), would result in a tower with a height that exceeds the current maximum height of 100 feet. It would also eliminate the possibility that a new freestanding pole of up to 100 feet could be built to carry 2 antenna RAD centers (which could be either 1 carrier that needs 2 RAD centers or 2 carriers that each need 1 RAD center).

    - Section 65.310(e) would be revised to reduce the current maximum allowed height of a freestanding pole in industrial districts from 150 feet to 122 feet. Again, the purpose and effect of this revision is to eliminate the possibility that a future modification to extend the height of such a tower by up to 28 feet (which the City would be required to allow under the FCC's rules) will result in a tower higher than 150 feet, the current maximum height. Given that this subsection applies to both new and existing

freestanding poles in industrial districts, the intent is not clear with respect to existing poles.

- Thus, the proposed ordinance revisions are contrary to the intent of the FCC's rules, which is " to promote the deployment of wireless infrastructure" by "eliminating unnecessary reviews, thus reducing the costs and delays associated with facility siting and construction. " FCC Report and Order, par. 1, WT Docket No. 13-238 (Oct. 21. 2014).

- By reducing the maximum heights of freestanding poles, the proposed revisions would severely limit the ability to collocate multiple wireless antennas on new freestanding poles (65.310(d)(1)) and on freestanding poles in industrial districts (section 65.310(e)).

    - Thus, proposed revisions are directly contrary the FCC's intent to "facilitate the zoning process for collocations", recognizing that "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. " FCC Report and Order, par. 142, WT Docket No. 13-238 (Oct. 21. 2014).

    - Proposed revisions would have unintended effect of leading to need for more freestanding poles than would otherwise be the case.

    - As demand for wireless service increases, proposed revisions would have the unintended effect of impairing or prohibiting the ability of wireless carriers to provide reliable service or to increase the capacity of their networks.

- Proposed amendments should be changed as follows:

    - Section 65.310(a)-Delete next to the last sentence, beginning "Conditional use permit review for such antennas will take into account...." Revise the last sentence to read: "Notwithstanding any provision of the St. Paul Zoning Code to the contrary, a conditional use permit is not required for any eligible facility modification allowed under 47 C.F.R. Part 1."

    - The proposed amendment to section 65.310(d)(1) should be rejected.

    - The proposed amendment to section 65.310(e) reducing 150 feet to 122 feet should be rejected.

- Other revisions to the existing code language need to be made to conform with the FCC rules implementing section 6409

- For example, requiring a CUP to add wireless antennas to an existing wireless residential structure less than 60 feet high, as Section 65.310 (a) would do in an expanded area, is contrary to the new FCC rules to the extent the additional antennas qualify as an eligible facility modification (i.e., increase in height above top of structure of no more than 10% or 10 feet, whichever is greater). FCC Report and Order, par. 193, WT Docket No. 13-238 (Oct. 21. 2014).
- Thus, the first sentence of Section 65.310(a) should be revised as follows: "In residential, traditional neighborhood and business districts, a conditional use permit is required for cellular telephone antennas on a residential structure less than sixty (60) feet high, unless the antennas are an eligible facility modification allowed under 47 CFR part 1."

Valerie A. Bruggeman

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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.

* * * * *

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