tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 17, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017–09392 Filed 5–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 17

**[WT Docket No. 17–79; FCC 17–38]**

### Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) seeks comment on proposals to reduce the regulatory impediments to wireless network infrastructure investment and deployment.

**DATES:** Interested parties may file comments on or before June 9, 2017, and reply comments on or before July 10, 2017.

**ADDRESSES:** You may submit comments and reply comments on or before the dates indicated in the **DATES** section above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). *All filings related to this document shall refer to WT Docket No. 17–79.*

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

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

For additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection modifications proposed herein should be submitted to the Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

**FOR FURTHER INFORMATION CONTACT:** For further information on this proceeding, contact Aaron Goldschmidt, *Aaron.Goldschmidt@fcc.gov,* of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, (202) 418–7146, or David Sieradzki, *David.Sieradzki@fcc.gov,* of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, (202) 418–1368.

**SUPPLEMENTARY INFORMATION:**

This is a summary of the Federal Communications Commission's Notice of Proposed Rulemaking and Notice of Inquiry (NPRM and NOI, respectively), in WT Docket No. 17–79; FCC 17–38, adopted April 20, 2017, and released on April 21, 2017. The document is available for download at *http://fjallfoss.fcc.gov/edocs_public/.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

## I. Notice of Proposed Rulemaking

### *A. Streamlining State and Local Review*

1. In this section, the Commission addresses the process for reviewing and deciding on wireless facility deployment applications conducted by State and local regulatory agencies. The Commission seeks comment on several potential measures or clarifications intended to expedite such review pursuant to the Commission's authority under Section 332 of the Communications Act.

2. The Commission has taken a number of important actions to date implementing Section 332(c)(7) of the Communications Act (Act) and Section 6409(a) of the Spectrum Act, each of which has been upheld by federal courts. The Commission seeks to assess the impact of the Commission's actions to date, in order to evaluate the measures the Commission discusses in the NPRM, as well as other possible actions, and to determine whether those measures are likely to be effective in further reducing unnecessary and potentially impermissible delays and burdens on wireless infrastructure deployment associated with State and local siting review processes. Thus, the Commission asks parties to submit facts and evidence on the issues discussed below and on any other matters relevant to the policy proposals set forth here. The Commission seeks information on the prevalence of barriers, costs thereof, and impacts on investment in and deployment of wireless services, including how such costs compare to the overall costs of deployment. The Commission seeks information on the specific steps that various regulatory authorities employ at each stage in the process of reviewing applications, and which steps have been most effective in efficiently resolving tensions among competing priorities of network deployment and other public interest goals. In addition, parties should detail the extent to which the Commission's existing rules and policies have or have not been successful in addressing local

siting review challenges, including effects or developments since the *2014 Infrastructure Order,* the Commission's most recent major decision addressing these issues *(See* Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order, 29 FCC Rcd 12865 (2014) (*2014 Infrastructure Order*)). To the extent that parties have submitted information in response to the Wireless Telecommunications Bureau's *Streamlining PN* that is relevant to these questions, the Commission invites them to submit such data in the present docket (*See* Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition For Declaratory Ruling, Public Notice, 31 FCC Rcd 13360, 13368 (WTB 2016) (*Streamlining PN*)). In addition, to the extent parties discuss the conduct or practices of government bodies or wireless facility siting applicants, the Commission strongly urges them to identify the particular entities that they assert engaged in such conduct or practices.

3. Further, in seeking comment on new or modified measures to expedite local review, the Commission invites commenters to discuss what siting applicants can or should be required to do to help expedite or streamline the siting review process. Are there ways in which applicants are causing or contributing to unnecessary delay in the processing of their siting applications? If so, the Commission seeks comment on how the Commission should address or incorporate this consideration in any action the Commission takes in this proceeding. For example, to what extent have delays been the result of incomplete applications or failures to properly respond to requests to the applicant for additional information, and how should measures the Commission adopts or revises to streamline application review ensure that applicants are responsible for supplying complete and accurate filings and information? Further, are there steps the industry can take outside the formal application review process that may facilitate or streamline such review? Are there siting practices that applicants can or should adopt that will facilitate faster local review while still achieving the deployment of infrastructure necessary to support advanced wireless broadband services?

1. ''Deemed Granted'' Remedy for Missing Shot Clock Deadlines

4. The Commission now takes a fresh look and seeks comment on a ''deemed granted'' remedy for State and local agencies' failure to satisfy their obligations under Section 332(c)(7)(B)(ii) to act on applications outside the context of the Spectrum Act. The Commission invites commenters to address whether the Commission should adopt one or more of the three options discussed below regarding the mechanism for implementing a ''deemed granted'' remedy. The Commission describes each of these options below and explains its analysis of its legal authority to adopt each of them. The Commission seeks comment on the benefits and detriments of each option and invites parties to discuss the Commission's legal analysis. The Commission also seeks comment on whether there are other options for implementing a ''deemed granted'' remedy.

5. *Irrebuttable Presumption.* In the *2009 Shot Clock Declaratory Ruling,* the Commission created a ''rebuttable presumption'' that the shot clock deadlines established by the Commission were reasonable (*See* Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review, Declaratory Ruling, 24 FCC Rcd 13994 (2009) (*2009 Shot Clock Declaratory Ruling*)). The Commission anticipated that this would give State and local regulatory agencies ''a strong incentive to resolve each application within the time frame defined as reasonable.'' Thus, when an applicant sues pursuant to Section 332(c)(7)(B)(v) to challenge an agency's failure to act on an application by the applicable deadline, the agency would face the burden of ''rebut[ting] the presumption that the established timeframes are reasonable,'' and if it fails to satisfy this burden, the court could ''issu[e] . . . an injunction granting the application.'' The Commission believes one option for establishing a ''deemed granted'' remedy for a State or local agency's failure to act by the applicable deadline would be to convert this *rebuttable presumption* into an *irrebuttable* presumption. Thus, the Commission's determination of the reasonable time frame for action (*i.e.,* the applicable shot clock deadline) would ''set an absolute limit that—in the event of a failure to act—results in a deemed grant.''

6. The Commission believes it has legal authority to adopt this approach. The Commission sees no reason to continue adhering to the cautious approach articulated in the *2009 Shot Clock Declaratory Ruling—i.e.,* that Section 332(c)(7) ''indicates Congressional intent that courts should have the [sole] responsibility to fashion . . . remedies'' on a ''case-specific'' basis. The Commission advanced that theory without citing any legislative history or other sources, and the Fifth Circuit, in its decision upholding the *2009 Shot Clock Declaratory Ruling,* apparently declined to rely on it. Instead, the Fifth Circuit found no indication in the statute and its legislative history of any clear Congressional intent on whether the Commission could ''issue an interpretation of section 332(c)(7)(B)(v) that would guide courts' determinations of disputes under that section,'' and went on to affirm that the Commission has broad authority to render definitive interpretations of ambiguous provisions such as this one in Section 332(c)(7). The Fifth Circuit further found—and the Supreme Court affirmed—that courts must follow such Commission interpretations.

7. The Commission sees nothing in the statute that explicitly compels a case-by-case assessment of the relevant circumstances for each individual application, nor any provision specifically requiring that those time frames be indefinitely adjustable on an individualized basis, rather than subject to dispositive maximums that may be deemed reasonable as applied to specified categories of applications. While Section 332(c)(7)(B)(ii) provides that a locality must act on each application ''within a reasonable time, *taking into account the nature and scope of such request,*'' this does not necessarily mean that a reviewing court ''must consider the specific facts of individual applications'' to determine whether the locality acted within a reasonable time frame; the Commission is well-positioned to take into account the ''nature and scope'' of particular categories of applications in determining the maximum reasonable amount of time for localities to address each type. The Commission seeks comment on this analysis.

8. *Lapse of State and Local Governments' Authority.* In the alternative (or in addition) to the irrebuttable presumption approach discussed above, the Commission believes it may implement a ''deemed granted'' remedy for State and local agencies' failure to act within a reasonable time based on the following interpretation of ambiguous provisions in the statute. Section 332(c)(7)(A) assures these agencies that their ''authority over decisions concerning the placement, construction, and modification of personal wireless service facilities'' is preserved—but significantly, qualifies that assurance with the provision ''except as provided'' elsewhere in Section 332(c)(7). The Commission seeks comment on whether

the Commission should interpret this phrase as meaning that if a locality fails to meet its obligation under Section 332(c)(7)(B)(ii) to ''act on [a] request for authorization to place, construct, or modify personal wireless facilities within a reasonable period of time,'' then its ''authority over decisions concerning'' that request lapses and is no longer preserved. Under this interpretation, by failing to act on an application within a reasonable period of time, the agency would have defaulted its authority over such applications (*i.e.,* lost the protection of Section 332(c)(7)(A), which otherwise would have preserved such authority), and at that point no local land-use regulator would have authority to approve or deny an application. Arguably, the Commission could establish that in those circumstances, there is no need for an applicant to seek such approval. The Commission seeks comment on this interpretation and on the desirability of taking this approach.

9. *Preemption Rule.* A third approach to establish a ''deemed granted'' remedy—standing alone or in tandem with one or both of the approaches outlined above—would be to promulgate a rule to implement the policies set forth in Section 332(c)(7). Sections 201(b) and 303(r), as well as other statutory provisions, generally authorize the Commission to adopt rules or issue other orders to carry out the substantive provisions of the Communications Act. Further, the Fifth Circuit affirmed the determination in the *2009 Shot Clock Declaratory Ruling* that the Commission's ''general authority to make rules and regulations to carry out the Communications Act includes the power to implement section 332(c)(7)(B)(ii) and (v).'' Accordingly, the Commission seeks comment on whether it could promulgate a ''deemed granted'' rule to implement Section 332(c)(7). The Commission also seeks comment on whether Section 253, standing alone or in conjunction with Section 332(c)(7) or other provisions of the Act, provides the authority for the Commission to promulgate a ''deemed granted'' rule.

2. Reasonable Period of Time To Act on Applications

10. In 2009, the Commission determined that, for purposes of determining what is a ''reasonable period of time'' under Section 332(c)(7)(B)(ii), 90 days should be sufficient for localities to review and act on (either by approving or denying) complete collocation applications, and that 150 days is a reasonable time frame for them to review and act on other types of complete applications to place, construct, or modify wireless facilities. In its *2014 Infrastructure Order,* the Commission implemented Section 6409(a) of the Spectrum Act (enacted by Congress in 2012) by, among other things, creating a new 60-day shot clock within which localities must act on complete applications subject to the definitions in the Spectrum Act.

11. The Commission asks commenters to discuss whether the Commission should consider adopting different time frames for review of facility deployments not covered by the Spectrum Act. For example, the Commission seeks comment on whether it should harmonize the shot clocks for applications that are not subject to the Spectrum Act with those that are, so that, for instance, the time period deemed reasonable for non-Spectrum Act collocation applications would change from 90 days to 60 days. Alternatively, should the Commission establish a 60-day shot clock for some subset of collocation applications that are not subject to the Spectrum Act, for example, applications that meet the relevant dimensional limits but are nevertheless not subject to the Spectrum Act because they seek to collocate equipment on non-tower structures that do not have any existing antennas? Should the Commission adopt different presumptively reasonable time frames for resolving applications for more narrowly defined classes of deployments such as (a) construction of new structures of varying heights (*e.g.,* 50 feet tall or less, versus 50 to 200 feet tall, versus taller than 200 feet); (b) construction of new structures in or near major utility or transportation rights of way, or that are in or near established clusters of similar structures, versus those that are not; (c) deployments in areas that are zoned for residential, commercial, or industrial use, or in areas where zoning or planning ordinances contemplate little or no additional development; or (d) replacements or removals that do not fall within the scope of Section 6409(a) of the Spectrum Act (for example, because they exceed the dimensional limits for requests covered by that provision)? The Commission also requests comment on whether to establish different time frames for (i) deployment of small cell or Distributed Antenna System (DAS) antennas or other small equipment versus more traditional, larger types of equipment or (ii) requests that include multiple proposed deployments or, equivalently, ''batches'' of requests submitted by a single provider to deploy multiple related facilities in different locations, versus proposals to deploy one facility. Should the Commission align the Commission's definitions of categories of deployments for which the Commission specifies reasonable time frames for local siting review with the Commission's definitions of the categories of deployments that are categorically excluded from environmental or historic preservation review?

12. The Commission seeks comment on what time periods would be reasonable (outside the Spectrum Act context) for any new categories of applications, and on what factors the Commission should consider in making such a decision. For what types or categories of wireless siting applications may shorter time periods be reasonable than those established in the *2009 Shot Clock Declaratory Ruling*? The Commission invites commenters to submit information to help guide the Commission's development of appropriate time frames for various categories of deployment. The Commission asks commenters to submit any available data on whether localities already recognize different categories of deployment in their processes, and on the actual amounts of time that localities have taken under particular circumstances.

13. The Commission also seeks comment on whether it should provide further guidance to address situations in which it is not clear when the shot clock should start running, or in which States and localities on one hand, and industry on the other, disagree on when the time for processing an application begins. For instance, the Commission has heard anecdotally that some jurisdictions impose a ''pre-application'' review process, during which they do not consider that a request for authorization has been filed. The Commission seeks comment on how the shot clocks should apply when there are such pre-application procedures; at what point should the clock begin to run? Are there other instances in which there is a lack of clarity or disagreement about when the clock begins to run? The Commission asks parties to address whether and how it should provide clarification of how the Commission's rules apply in those circumstances.

14. Finally, the Commission seeks comment on whether there are additional steps that should be considered to ensure that a deemed granted remedy achieves its purpose of expediting review. For example, to what extent can the attachment of conditions to approvals of local zoning applications slow the deployment of infrastructure?

Are applicants encountering requirements to comply with codes that are not reasonably related to health and safety? To the extent these conditions present challenges to deployment, are there steps the Commission can and should take to address such challenges?

3. Moratoria

15. Another concern relating to the ''reasonable periods of time'' for State and local agencies to act on siting applications is that some agencies may be continuing to impose ''moratoria'' on processing such applications, which inhibit the deployment of the infrastructure needed to provide robust wireless services. If so, such moratoria might contravene the *2014 Infrastructure Order,* which clearly stated that the shot clock deadlines for applications continue to ''run[] regardless of any moratorium.'' The Commission explained that this conclusion was ''consistent with a plain reading of the *2009 Declaratory Ruling,* which specifies the conditions for tolling and makes no provision for moratoria,'' and concluded that this means that ''applicants can challenge moratoria in court when the shot clock expires without State or local government action.'' The Commission sees no reason to depart from this conclusion. The Commission asks commenters to submit specific information about whether some localities are continuing to impose moratoria or other restrictions on the filing or processing of wireless siting applications, including refusing to accept applications due to resource constraints or due to the pendency of state or local legislation on siting issues, or insisting that applicants agree to tolling arrangements. Commenters should identify the specific entities engaging in such actions and describe the effect of such restrictions on parties' ability to deploy or upgrade network facilities and provide service to consumers. The Commission proposes to take any additional actions necessary, such as issuing an order or declaratory ruling providing more specific clarifications of the moratorium ban or preempting specific State or local moratoria. Commenters should discuss the benefits and detriments of any such additional measures and the Commission's legal authority to adopt them.

*B. Reexamining National Historic Preservation Act and National Environmental Policy Act Review*

16. In the following sections, the Commission undertakes a comprehensive fresh look at its rules and procedures implementing the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) as they relate to the Commission's implementation of Title III of the Act in the context of wireless infrastructure deployment, given the ongoing evolution in wireless infrastructure deployment towards smaller antennas and supporting structures as well as more frequent collocation on existing structures.

2. Updating Our Approach to the NHPA and NEPA

a. Need for Action

17. Many wireless providers have raised concerns about the Commission's environmental and historic preservation review processes because, they say, these reviews increase the costs of deployment and pose lengthy and often unnecessary delays, particularly for small facility deployments. A large number of wireless providers complain that the Tribal component of the Section 106 review process is particularly cumbersome and costly. The Commission seeks concrete information on the amount of time it takes for Tribal Nations to complete the Section 106 review process and on the costs that Tribal participation imposes on facilities deployment and on the provision of service. The Commission also seeks comment and specific information on the extent of benefits attributable to Tribal participation under the Commission's Section 106 procedures, particularly in terms of preventing damage to historic and culturally significant properties.

18. In addition, in May 2016, PTA–FLA filed a Petition for Declaratory Ruling arguing that ''Tribal fees have become so exorbitant in some cases to approach or even exceed the cost of actually erecting the tower.'' The Commission incorporates PTA–FLA's petition into this proceeding and seeks comment below on its proposals.

19. Some wireless providers contend that the SHPO review process also results in significant delays in deployment. The Commission seeks comment on the costs associated with SHPO review under the Commission's historic preservation review process, including direct financial costs; costs that delay imposes on carriers, tower owners, and the public; and any other costs. What are the costs associated with SHPO review of typical small facility deployments, and how do these compare with the costs for tower construction projects? Does the SHPO review process duplicate historic preservation review at the local level, particularly when local review is conducted by a Certified Local Government or a governmental authority that issues a Certificate of Appropriateness? In addition, the Commission seeks comment on how often SHPO review results in changes to a construction project due to a SHPO's identification of potential harm to historic properties or confers other public benefits.

20. Some argue that NEPA compliance imposes extraordinarily high costs on wireless providers and results in significant delays. The Commission seeks comment on the costs and relative benefits of the Commission's NEPA rules. What are the costs associated with NEPA compliance, other than costs associated with historic preservation review? How do the costs of NEPA compliance for tower construction compare to such costs for small facilities, and what specific benefits does the review confer?

21. Finally, some note that facilities requiring Federal review must also undergo pre-construction review by local governmental authorities, and assert that the inability to engage in these dual reviews simultaneously can add significant time to the process. The Commission seeks comment on whether local permitting, NEPA review, and Section 106 review processes can feasibly be conducted simultaneously, and on whether there are barriers preventing simultaneous review to the extent it is feasible. To what extent do significant siting changes or the potential for such changes during the local process make simultaneous review impractical or inefficient? Alternatively, have reviewing or consulting parties in the Commission's NEPA or Section 106 review processes declined to process an application until a local permitting process is complete? The Commission seeks comment on whether and under what circumstances simultaneous review would, on the whole, minimize delays and provide for a more efficient process and what steps, if any, the Commission should take to facilitate or enable such simultaneous review.

b. Process Reforms

(i) Tribal Fees

22. In this section, the Commission identifies and seeks comment on several issues relevant to fees paid to Tribal Nations in the Section 106 process. In addition to commenting on the legal framework and on potential resolutions to the issues, the Commission encourages commenters to provide specific factual information on current Tribal and industry practices and on the

impacts of those practices on licensees/tower owners, Tribal Nations, and timely deployment of advanced broadband services to all Americans. The Commission further welcomes information on the practices of other Federal agencies for the Commission's consideration.

23. Neither the NHPA nor the Advisory Council on Historic Preservation's (ACHP) implementing regulations address whether and under what circumstances Tribal Nations and Native Hawaiian Organizations (NHO) may seek compensation in connection with their participation in the Section 106 process. The ACHP has, however, issued guidance on the subject in the form of a memorandum in 2001 and as part of a handbook last issued in 2012. The ACHP 2001 Fee Guidance explains that ''the agency or applicant is not required to pay the tribe for providing its views.'' Further, ''[i]f the agency or applicant has made a reasonable and good faith effort to consult with an Indian tribe and the tribe refuses to respond without receiving payment, the agency has met its obligation to consult and is free to move to the next step in the Section 106 process.'' The guidance also states, however, that when a Tribal Nation ''fulfills the role of a consultant or contractor'' when conducting reviews, ''the tribe would seem to be justified in requiring payment for its services, just as any other contractor,'' and the company or agency ''should expect to pay for the work product.'' As explained below, the Commission seeks comment on how the ACHP's guidance can be applied in the context of the Commission's existing procedures and the proposals in this proceeding. Moreover, the Commission seeks comment on practices or procedures of other Federal agencies with respect to addressing the various roles a Tribal Nation may play in the Section 106 process and how to identify those services for which a Tribal Nation would be justified in seeking fees.

24. *Circumstances When Fees Are Requested.* The ACHP Handbook clearly states that no ''portion of the NHPA or the ACHP's regulations require[s] an agency or an applicant to pay for any form of tribal involvement.'' The Commission notes that ACHP guidance permits payments to a Tribal Nation when it fulfills a role similar to any other consultant or contractor. At what point in the Tower Construction Notification System (TCNS) process, if any, might a Tribal Nation act as a contractor or consultant? The Commission seeks comment on any facts that might affect the answer to that question. Does the particular request of the applicant determine whether a Tribal Nation is acting as a contractor or consultant? For example, the ACHP Handbook notes that if an applicant asks for ''specific information and documentation'' from a Tribal Nation, then the Tribal Nation is being treated as a contractor or consultant. Should the Commission infer if the applicant does not ask explicitly for such information and documentation, then no payment is necessary? The Commission also seeks comment on whether Tribal review for some types of deployment is less in the nature of a contractor or consultant. For example, would collocations or applications to site poles in rights of way be less likely to require services outside of the Tribal Nation's statutory role? In reviewing TCNS submissions for collocations or for siting poles in rights of way, under what circumstances might a Tribal Nation incur research costs for which it or another contractor might reasonably expect compensation?

25. Once a Tribal Nation or NHO has been notified of a project, an applicant must provide ''all information reasonably necessary for the Indian tribe or NHO to evaluate whether Historic Properties of religious and cultural significance may be affected'' and provide the Tribal Nation or NHO with a reasonable opportunity to respond. The Commission seeks comment on this requirement and on any modifications the Commission can and should make. In particular, the Commission seeks comment on whether the information in FCC Form 620 or FCC Form 621 is sufficient to meet the requirement that ''all information reasonably necessary . . .'' has been provided to the Tribal Nation. If not, are there modifications to these forms that would enable the Commission to meet this requirement? For example, should the FCC Form 620 and FCC Form 621 be amended to address the cultural resources report that an applicant prepares after completing a Field Survey? Additionally, the Commission seeks comment on whether a Tribal Nation's or NHO's review of the materials an applicant provides under the Nationwide Programmatic Agreement (NPA) Section VII is ever, and if so under what circumstances, the equivalent of asking the Tribal Nation or NHO to provide ''specific information and documentation'' like a contractor or consultant would, thereby entitling the Tribal Nation to seek compensation under ACHP guidance and the NPA. If a Tribal Nation chooses to conduct research, surveying, site visits or monitoring absent a request of the applicant, would such efforts require payment from the applicant? If an archaeological consultant conducted research, surveying, site visits, or monitoring absent a request of the applicant, would the applicant normally be required to pay that contractor or consultant? The Commission seeks comment on how the ACHP Handbook's statement that an ''applicant is free to refuse [payment] just as it may refuse to pay for an archaeological consultant,'' as well as its statement that ''the agency still retains the duties of obtaining the necessary information [to fulfill its Section 106 obligations] through reasonable methods,'' impacts the Commission's analysis of payments for Tribal participation.

26. The Commission notes that some Tribal Nations have indicated that they assess a flat upfront fee for all applications as a way to recover costs for their review of all TCNS applications, thereby eliminating the administrative burden of calculating actual costs for each case. The Commission seeks comment on this manner of cost recovery and whether such cost recovery is consistent with ACHP's fee guidance in its 2012 Handbook. Tribal Nations have also indicated that they have experienced difficulties in collecting compensation after providing service as a reason for upfront fee requests. The Commission seeks comment on whether this concern could be alleviated if the Commission clarifies when a Tribal Nation is acting under its statutory role and when it is being hired as a contractor or consultant under the Commission's process. The Commission also seeks comment on whether there might be a more appropriate way to address this concern.

27. What steps, if any, can the Commission take to issue the Commission's own guidance on the circumstances in the Commission's process when the Tribal Nation is expressing its views and no compensation by the agency or the applicant is required under ACHP guidance, and the circumstances where the Tribal Nation is acting in the role of a consultant or contractor and would be entitled to seek compensation? The Commission seeks comment on what bright-line test, if any, could be used. How does the reasonable and good faith standard for identification factor, if at all, into when a Tribal request for fees must be fulfilled in order to meet the standard? The Commission seeks comment on how disputes between the parties might be resolved when a Tribal Nation asserts that compensable effort is required to initiate or conclude Section 106 review. The Commission seeks comment on whether there are other

mechanisms to reduce the need for case-by-case analysis of fee disputes. While the Commission seeks comment generally on its process, the Commission also seeks comment particularly in the context of deployment of infrastructure for advanced communications networks.

28. To the extent that supplementing current ACHP guidance would help clarify when Tribal fees may be appropriate while both facilitating efficient deployment and recognizing Tribal interests, what input, if any, should the Commission provide to the ACHP on potential modifications to ACHP guidance?

29. *Amount of Fees Requested.* One factor that appears to be driving tower owners and licensees to seek Commission guidance in the fee area is not the mere existence of fees, but instead the amount of compensation sought by some Tribal Nations. How, if at all, does the ''reasonable and good faith'' standard for identification factor into or temper the amount of fees a Tribal Nation may seek in compensation? Are there any extant fee rates or schedules that might be of particular use to applicants and Tribal Nations in avoiding or resolving disputes regarding the amount of fees?

30. One party has requested in a petition that the Commission establish a fee schedule or otherwise resolve fee disputes. The Commission seeks comment on the legal framework applicable to this request. How might the impact of fee disputes on the deployment of infrastructure for advanced communications networks provide a basis for establishing a fee schedule in this context using the Communications Act as authority? Do the NHPA or other statutes limit the Commission's ability to establish such a fee schedule, and if so, how? How might the Miscellaneous Receipts Act (MRA) and General Accountability Office (GAO) precedent on improper augmentation temper the parameters of the Commission's actions in the area? The Commission seeks comment on whether other Federal agencies have established fee schedules or addressed the matter in any way, *e.g.,* either formally or informally or with respect to particular projects. How does due regard for Tribal sovereignty and the Government's treaty obligations affect the Commission's latitude for action in this area?

31. If the Commission were to establish a fee schedule, the Commission seeks comment on what weight or impact it might have on the Commission's process. For example, to what extent would fees at or below the level established by a fee schedule be considered presumptively reasonable? The Commission further seeks comment on what legal framework would be relevant to resolution of disputes concerning an upward or downward departure from the fee schedule. Should the fees specified in such a schedule serve as the presumptive maximum an applicant would be expected to pay, and under what circumstances might an upward departure from the fee schedule be appropriate? In addition to the concepts cited in the prior paragraph, are there other legal principles at play in the resolution of a dispute over a fee that might not arise in the context of merely setting a fee schedule? Have any other Federal agencies formally or informally resolved fee disputes between applicants and Tribal Nations, and if so, under what legal parameters? The Commission also seeks comment on what categories of services should be included, and whether the categories should be general or more specific. How would the Commission establish the appropriate level for fees? How could a fee schedule take into account both regional differences and changes in costs over time, *i.e.,* inflation? The Commission also seeks comment on whether it should only establish a model fee schedule and whether that would be consistent with the Tribal engagement requirements contemplated by Section 106.

32. *Geographic Areas of Interest.* Tribal Nations have increased their areas of interest within the TCNS as they have improved their understanding of their history and cultural heritage. As a result, applicants must sometimes contact upwards of 30 different Tribal Nations and complete the Section 106 process with each of them before being able to build their project. The Commission seeks comment on whether there are actions it can and should take to mitigate this burden while complying with the Commission's obligation under the NHPA and promoting the interests of all stakeholders. For example, the TCNS allows Tribal Nations and NHOs to select areas of interest at either a State or county level, but many Tribal Nations have asked to be notified of any project within entire States, and in a few instances, at least 20 different States. The Commission seeks comment on whether it could and should encourage, or require, the specification of areas of interest by county. The Commission also seeks comment on whether it should require some form of certification for areas of interest, and if so, what would be the default if a Tribal Nation fails to provide such certification.

33. The Commission seeks comment on whether TCNS should be modified to retain information on areas where concerns were raised and reviews conducted, so that the next filer knows whether there is a concern about cultural resources in that area or not. To what extent should applicants be able to rely on prior clearances, given that resources may continue to be added to the lists of historic properties? To the extent the Commission considers allowing applicants to rely on prior clearances, how should the Commission accommodate Tribal Nations' changes to their areas of interest? The Commission further seeks comment on how it can protect information connected to prior site reviews, especially those areas where a tower was not cleared because there may be artifacts. The Commission also seeks comment on whether it can make any other changes to TCNS or the Commission's procedures to improve the Tribal review process.

34. In addition, applicants routinely receive similar requests for compensation or compensable services from multiple Tribal Nations. While the Commission recognizes that each Tribal Nation is sovereign and may have different concerns, the Commission seeks comment on when it is necessary for an applicant to compensate multiple Tribal Nations for the same project or for the same activity related to that project, in particular site monitoring during construction. The Commission also seeks comment on whether, when multiple Tribal Nations request compensation to participate in the identification of Tribal historic properties of religious and cultural significance, whether there are mechanisms to gain efficiencies to ensure that duplicative review is not conducted by each Tribal Nation. Is it always necessary to obtain such services from all responding Tribal Nations that request to provide the service, and if so, why? Might one Tribal Nation when functioning in the role of a contractor perform certain services and share the work product with other Tribal Nations, *e.g.,* site monitoring? Could an applicant hire a qualified independent site monitor and share its work product with all Tribal Nations that are interested? How would the Commission ensure that such a monitor is qualified so that other Tribal Nations' interests will be adequately considered? Should the Commission require that such a monitor meet some established minimum standards? The Commission also seeks comment on whether monitors should

be required to prepare a written report and provide a copy to applicants.

35. *Remedies and Dispute Resolution.* While the ACHP has indicated that Tribal concurrence is not necessary to find that no historic properties of religious and cultural significance to Tribal Nations or NHOs would be affected by an undertaking, the agency is responsible for getting the information necessary to make that determination. The Commission seeks comment on how these two directives interact. The ACHP 2001 Fee Guidance states that ''if an agency or applicant attempts to consult with an Indian tribe and the tribe demands payment, the agency or applicant may refuse and move forward.'' The Commission seeks comment on whether and under what circumstances the Commission should authorize a project to proceed when a Tribal Nation refuses to respond to a Section 106 submittal without payment.

36. Under the NPA, when a Tribal Nation or NHO refuses to comment on the presence or absence of effects to historic properties without compensation, the applicant can refer the procedural disagreement to the Commission. The Commission seeks comment on whether it can adjudicate these referrals by evaluating whether the threshold of ''reasonable and good faith effort'' to identify historic properties has been met, given that the Tribal Nation can always request government-to-government consultation in the event of disagreement.

37. The Commission seeks comment on when it must engage in government-to-government consultation to resolve fee disputes, including when the compensation level for an identification activity has been established by a Tribal government.

38. *Negotiated Alternative.* The Commission notes that since September 2016, it has been facilitating meetings among Tribal and industry stakeholders with the goal of resolving challenges to Tribal requirements in the Section 106 review process, including disagreements over Tribal fees. The Commission seeks comment on whether it should continue seeking to develop consensus principles and, if so, how those principles should be reflected in practice. For example, the Commission seeks comment on whether it should seek to enter into agreements regarding best practices with Tribal Nations and their representatives.

(ii) Other NHPA Process Issues

(ii) Other NHPA Process Issues

39. *Lack of Response.* As discussed above, while both State Historic Preservation Officers (SHPOs) and Tribal Nations/NHOs are expected ordinarily to respond to contacts within 30 days, the NPA and the Commission's practice establish different processes to be followed when responses are not timely. The Commission seeks comment on what measures, if any, it should take to further speed either of these review processes, either by amending the NPA or otherwise, while assuring that potential effects on historic preservation are fully evaluated. What effect would such proposals have on addressing Section 106-associated delays to deployment? Should different time limits apply to different categories of construction, such as new towers, DAS and small cells, and collocations? Have advances in communications during the past decade, particularly with respect to communications via the Internet, changed reasonable expectations as to timeliness of responses and reasonable efforts to follow up?

40. With respect to Tribal Nations and NHOs, the Commission seeks comment on whether the processes established by the *2005 Declaratory Ruling* and the Good Faith Protocol adequately ensure the completion of Section 106 review when a Tribal Nation or NHO is non-responsive (*See* Clarification of Procedures for Participation of Federally Recognized Indian Tribes and Native Hawaiian Organizations Under the Nationwide Programmatic Agreement, Declaratory Ruling, 20 FCC Rcd 16092 (2005) (*2005 Declaratory Ruling*)). The Commission seeks comment on whether the process can be revised in a manner that would permit applicants to self-certify their compliance with the Commission's Section 106 process and therefore proceed once they meet the Commission's notification requirements, without requiring Commission involvement, in a manner analogous to the ''deemed granted'' remedy for local governments. Would such an approach be consistent with the NPA and with the Commission's legal obligations? The Commission notes that Commission staff has discovered on numerous occasions that applicants have failed to perform their Tribal notifications as the Commission's processes require. If the Commission were to permit applicants to self-certify that they have completed their Tribal notification obligations, the Commission seeks comment on how it could ensure that the certifications are truthful and well-founded.

41. *Batching.* In the PTC Program Comment, the ACHP established a streamlined process for certain facilities associated with building out the Positive Train Control (PTC) railroad safety system (*See* Wireless Telecommunications Bureau Announces Adoption of Program Comment to Govern Review of Positive Train Control Wayside Facilities, WT Docket 13–240, Public Notice, 29 FCC Rcd 5340, Attachment (WTB 2014) (*PTC Program Comment*)). Among other aspects of the PTC Program Comment, eligible facilities may be submitted to SHPOs and through TCNS in batches.

42. The Commission seeks comment on whether it should adopt either a voluntary or mandatory batched submission process for non-PTC facilities. What benefits could be realized through the use of batching? What lessons can be learned from the experience with PTC batching? What guidelines should the Commission provide, if any, regarding the number of facilities to be included in a batch, their geographic proximity, or the size of eligible facilities? Should there be other conditions on eligibility, such as the nature of the location or the extent of ground disturbance? Should different time limits or fee guidelines, if any are adopted, apply to batched submissions? What changes to the Commission's current TCNS and E–106 forms and processes might facilitate batching? The Commission seeks comment on these and any other policy or operational issues associated with batching of proposed constructions.

43. *Other NHPA Process Reforms.* The Commission seeks comment on whether there are additional procedural changes that the Commission should consider to improve the Section 106 review process in a manner that does not compromise its integrity.

(iii) NEPA Process

44. The Commission seeks comment on ways to improve and further streamline its environmental compliance regulations while ensuring that the Commission meets its NEPA obligations. For example, should the Commission consider new categorical exclusions for small cells and DAS facilities? If so, under what conditions and on what basis? Should the Commission revise its rules so that an EA is not required for siting in a floodplain when appropriate engineering or mitigation requirements have been met? Are there other measures the Commission could take to reduce unnecessary processing burdens consistent with NEPA?

c. NHPA Exclusions for Small Facilities

45. As part of the effort to expedite further the process for deployment of wireless facilities, including small facility deployments in particular, the Commission seeks comment below on whether it should expand the categories of undertakings that are excluded from

Section 106 review. With respect to each of the potential exclusions discussed below, the Commission seeks comment on the alternatives of adopting additional exclusions directly in the Commission's rules, or incorporating into the Commission's rules a program alternative pursuant to the ACHP rules. The Commission may exclude activities from Section 106 review through rulemaking upon determining that they have no potential to cause effects to historic properties, assuming such properties are present. Where potential effects are foreseeable and likely to be minimal or not adverse, a program alternative under the ACHP's rules may be used to exclude activities from Section 106 review. The Commission seeks comment about whether the exclusions discussed below meet the test for an exclusion in 36 CFR 800.3(a)(1) or whether they would require a program alternative. To the extent that a program alternative would be necessary, the Commission seeks comment on which of the program alternatives authorized under the ACHP's rules would be appropriate. Particularly, for those potential exclusions where a program alternative would be required, commenters should discuss whether a new program alternative is necessary or whether an amendment to the NPA or a second amendment to the Collocation NPA would be the appropriate procedural mechanism (*See* Wireless Telecommunications Bureau Announces Execution of First Amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, Public Notice, 31 FCC Rcd 4617 (WTB 2016) (Collocation NPA)).

(i) Pole Replacements

46. The Commission seeks comment on whether it should take further measures to tailor Section 106 review for pole replacements. As noted above, wireless companies are increasingly deploying new infrastructure using smaller antennas and supporting structures, including poles. Under the existing NPA, pole replacements are excluded from Section 106 review if the pole being replaced meets the definition of a ''tower'' under the NPA (constructed for the sole or primary purpose of supporting Commission-authorized antennas), provided that the pole being replaced went through Section 106 review. The NPA also more generally excludes construction in or near communications or utility rights of way, including pole replacements, with certain limitations. In particular, the construction is excluded if the facility does not constitute a substantial increase in size over nearby structures and it is not within the boundaries of a historic property. However, proposed facilities subject to this exclusion must complete the process of Tribal and NHO participation pursuant to the NPA.

47. The Commission seeks comment on whether additional steps to tailor Section 106 review for pole replacements would help serve the Commission's objective of facilitating wireless facility siting, while creating no or foreseeably minimal potential for adverse impacts to historic properties. For example, should the replacement of poles be excluded from Section 106 review, regardless of whether a pole is located in a historic district, provided that the replacement pole is not ''substantially larger'' than the pole it is replacing (as defined in the NPA)? The Commission envisions that this proposed exclusion could address replacements for poles that were constructed for a purpose other than supporting antennas, and thus are not ''towers'' within the NPA definition, but that also have (or will have) an antenna attached to them. This exclusion would also apply to pole replacements within rights of way, regardless of whether such replacements are in historic districts. The Commission seeks comment on this proposal and on whether any additional conditions would be appropriate. For example, consistent with the existing exclusion for replacement towers, commenters should discuss whether the exclusion should be limited to projects for which construction and excavation do not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction. How would the ''leased or owned property'' be defined within a utility right of way that may extend in a linear manner for miles?

(ii) Rights of Way

48. The Commission seeks comment on whether to expand the NPA exemption from Section 106 review for construction of wireless facilities in rights of way. First, as noted above, current provisions of the NPA exclude from Section 106 review construction in utility and communications rights of way subject to certain limitations. The Commission seeks comment on whether to adopt a similar exclusion from Section 106 review for construction or collocation of communications infrastructure in transportation rights of way and whether such an exclusion would be warranted under 36 CFR 800.3(a)(1). The Commission recognizes the Commission's previous determination in the *NPA Order* that, given the concentration of historic properties near many highways and railroads, it was not feasible to draft an exclusion for transportation corridors that would both significantly ease the burdens of the Section 106 process and sufficiently protect historic properties (*See* Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, Report and Order, 20 FCC Rcd 1073 (2004) (*NPA Order*)). The Commission also recognized, however, that transportation corridors are among the areas where customer demand for wireless service is highest, and thus where the need for new facilities is greatest.

49. In addition, since the *NPA Order,* wireless technologies have evolved and many wireless providers now deploy networks that use smaller antennas and compact radio equipment, including DAS and small cell systems. In view of the changed circumstances that are present today, the Commission finds that it is appropriate to reconsider whether the Commission can exclude construction of wireless facilities in transportation rights of way in a manner that guards against potential effects on historic properties. The Commission seeks comment on whether such an exclusion should be adopted, subject to certain conditions that would protect historic properties, and, if so, what those conditions should be. For example, should the Commission require that poles be installed by auguring or that cable or fiber be installed by plow or by directional drilling? What stipulations are needed if a deployment may be adjacent to or on National Register-eligible or listed buildings or structures, or in or near a historic district? Would it be appropriate to have any limitation on height, in addition to the requirement in the current rights of way exclusion that the structures not constitute a substantial increase in size over existing nearby structures? How should any new exclusion address Tribal and NHO participation, especially for historic properties with archaeological components? The Commission also seeks comment on how to define the boundaries of a transportation right of way for these purposes.

50. In addition to considering whether to adopt an exclusion for construction in transportation rights of way, the Commission also seeks comment on whether to amend the current right of way exclusion to apply regardless of whether the right of way is located on a historic property. As noted above, the current right of way exclusion applies

only if (1) the construction does not involve a substantial increase in size over nearby structures and (2) the deployment would not be located within the boundaries of a historic property. The Commission seeks comment on whether this provision should be amended to exclude from Section 106 review construction of a wireless facility in a utility or communications right of way located on a historic property, provided that the facility would not constitute a substantial increase in size over existing structures. To the extent that utility and communications rights of way on historic properties already are lined with utility poles and other infrastructure, would allowing additional infrastructure have the potential to create effects? Commenters should discuss whether, if the exclusion is extended to historic properties, any additional conditions would be appropriate to address concerns about potential effects, for example any further limitation on ground disturbance. If so, how should ground disturbance be defined? The Commission also seeks comment about whether Tribal and NHO participation should continue to be required if an exclusion is adopted for facilities constructed in utility or communications rights of way on historic properties.

(iii) Collocations

51. Next, the Commission seeks comment on options to further tailor the Commission's review of collocations of wireless antennas and associated equipment. The Commission's rules have long excluded most collocations of antennas from Section 106 review, recognizing the benefits to historic properties that accrue from using existing support structures rather than building new structures. The Commission has also recently expanded these exclusions in the First Amendment to the Collocation NPA to account for the smaller infrastructure associated with new technologies. The Commission seeks comment now on whether additional measures to further streamline review of collocations are appropriate, whether as a matter of 36 CFR 800.3(a)(1) or under program alternatives, including those discussed below and any other alternatives.

52. First, the Commission seeks comment on whether some or all collocations located between 50 and 250 feet from historic districts should be excluded from Section 106 review. Under current provisions in the Collocation NPA, Section 106 review continues to be required for collocations on buildings and other non-tower structures located within 250 feet of the boundary of a historic district to the extent those collocations do not meet the criteria established for small wireless antennas. The Commission seeks comment on whether this provision should be revised to exclude from Section 106 review collocations located up to 50 feet from the boundary of a historic district. The Commission seeks comment on this proposal and on whether any additional criteria should apply to an exclusion under these circumstances.

53. Next, the Commission seeks comment on the participation of Tribal Nations and NHOs in the review of collocations on historic properties or in or near historic districts. Although, as stated above, the Collocation NPA excludes most antenna collocations from routine historic preservation review under Section 106, collocations on historic properties or in or near historic districts are generally not excluded, and in these cases, the NPA provisions for Tribal and NHO participation continue to apply. Consistent with the Commission's effort in this NPRM to take a fresh look at ways to improve and facilitate the review process for wireless facility deployments, the Commission seeks comment on whether to exclude from the NPA procedures for Tribal and NHO participation collocations that are subject to Section 106 review solely because they are on historic properties or in or near historic districts, other than properties or districts identified in the National Register listing or determination of eligibility as having Tribal significance. For instance, should the Commission exclude from review non-substantial collocations on existing structures involving no ground disturbance or no new ground disturbance, or non-substantial collocations on new structures in urban rights of way or indoors? Should the Commission exclude from the NPA provisions for Tribal and NHO participation collocations of facilities on new structures in municipal rights of way in urban areas that involve no new ground disturbance and no substantial increase in size over other structures in the right of way? Should the Commission exclude collocations of facilities on new structures in industrial zones or facilities on new structures in or within 50 feet of existing utility rights of way? Commenters should discuss whether collocations in these circumstances have the potential to cause effects on properties significant to Tribal history or culture. If so, are any effects likely to be minimal or not adverse? Does the likelihood of adverse effects depend on the circumstances of the collocation, for example whether it will cause new ground disturbance? The Commission also seeks comment on alternatives to streamline procedures for Tribal and NHO participation in these cases, for example different guidance on fees or deeming a Tribal Nation or NHO to have no interest if it does not respond to a notification within a specified period of time.

54. Finally, the Commission seeks comment on whether the Commission can or should exclude from routine historic preservation review certain collocations that have received local approval. In particular, one possibility would be to exclude a collocation from Section 106 review, regardless of whether it is located on a historic property or in or near a historic district, provided that: (1) The proposed collocation has been reviewed and approved by a Certified Local Government that has jurisdiction over the project; or (2) the collocation has received approval, in the form of a Certificate of Appropriateness or other similar formal approval, from a local historic preservation review body that has reviewed the project pursuant to the standards set forth in a local preservation ordinance and has found that the proposed work is appropriate for the historic structure or district. By eliminating the need to go through historic preservation review at both local and Federal levels, creating an exclusion for collocations under these circumstances might create significant efficiencies in the historic preservation review process. The Commission seeks comment on this option and on any alternatives, including whether any additional conditions should apply and whether the process for engaging Tribal Nations and NHOs for these collocations should continue to be required.

d. Scope of Undertaking and Action

55. The Commission also invites comment on whether it should revisit its interpretation of the scope of the Commission's responsibility to review the effects of wireless facility construction under the NHPA and NEPA. In the *Pre-Construction Review Order,* the Commission retained a limited approval authority over facility construction to ensure environmental compliance in services that no longer generally require construction permits (*See* Amendment of Environmental Rules, Report and Order, 5 FCC Rcd 2942 (1990) (*Pre-Construction Review Order)*). In light of the evolution of technology in the last 27 years and the

corresponding changes in the nature and extent of wireless infrastructure deployment, the Commission seeks comment on whether this retention of authority is required and, if not, whether and how it should be adjusted. Commenters should address the costs of NEPA and NHPA compliance and its utility for environmental protection and historic preservation for different classes of facilities, as well as the extent of the Commission's responsibility to consider the effects of construction associated with the provision of licensed services under governing regulations and judicial precedent. For example, should facilities constructed under site-specific licenses be distinguished from those constructed under geographic area licenses? Can the Commission distinguish DAS and small cell facilities from larger structures for purposes of defining what constitutes the Commission's action or undertaking, and on what basis? Should review be required only when an EA triggering condition is met, as PTA–FLA suggests, and if so how would the licensee or applicant determine whether an EA is required in the absence of mandatory review? To the extent there is a policy basis for distinguishing among different types of facilities, would exclusions from or modifications to the NEPA and/or NHPA review processes be a more appropriate tool to reflect these differences? Are the standards for defining the scope of the Commission's undertaking or major Federal action different under the NHPA than under NEPA? The Commission also invites comment on whether to revisit the Commission's determination that registration of antenna structures constitutes the Commission's Federal action and undertaking so as to require environmental and historic preservation review of the registered towers' construction.

56. In addition, since the Commission's environmental rules were adopted, an industry has grown of non-licensees that are in the business of owning and managing communications sites, so that most commercial wireless towers and even smaller communications support structures are now owned from the time of their construction by non-licensees. The Commission seeks comment on how this business model affects the Commission's environmental and historic preservation compliance regime. For example, how does the requirement to perform environmental and historic preservation review prior to construction apply when the licensee is not the tower owner? If the tower is built pursuant to a contract or other understanding with a collocator, what marketplace or other effects would result from interpreting the environmental obligation to apply to the licensee? What about cases where there is no such agreement or understanding? Does the requirement in the Collocation NPA to perform review for collocations on towers that did not themselves complete Section 106 review create problems in administration or market distortions where the owner of the underlying tower may not have been subject to the Commission's rules at the time of construction? The Commission invites comment on these and any related questions.

3. Collocations on Twilight Towers

57. There are a large number of towers that were built between the adoption of the Collocation NPA in 2001 and when the NPA became effective in 2005 that either did not complete Section 106 review or for which documentation of Section 106 review is unavailable. These towers are often referred to as ''Twilight Towers.'' The Commission seeks comment on steps the Commission should take to develop a definitive solution for the Twilight Towers issue. As the Commission undertakes this process, the Commission's goal remains to develop a solution that will allow Twilight Towers to be used for collocations while respecting the integrity of the Section 106 process. Facilitating collocations on these towers will serve the public interest by making additional infrastructure available for wireless broadband services and the FirstNet public safety broadband network. Moreover, facilitating collocations on existing towers will reduce the need for new towers, lessening the impact of new construction on the environment and on locations with historical and cultural significance.

58. In particular, the Commission seeks comment on whether to treat collocations on towers built between March 16, 2001 and March 7, 2005 that did not go through Section 106 historic preservation review in the same manner as collocations on towers built prior to March 16, 2001 that did not go through review. Under this approach, collocations on such towers would generally be excluded from Section 106 historic preservation review, subject to the same exceptions that currently apply for collocations on towers built on or prior to March 16, 2001, *i.e.,* collocations would be excluded from Section 106 review unless (1) the mounting of the antenna will result in a substantial increase in size of the tower; (2) the tower has been determined by the Commission to have an adverse effect on one or more historic properties; (3) the tower is the subject of a pending environmental review or related proceeding before the Commission involving compliance with Section 106 of the National Historic Preservation Act; or (4) the collocation licensee or the owner of the tower has received written or electronic notification that the Commission is in receipt of a complaint from a member of the public, a Tribal Nation, a SHPO or the ACHP that the collocation has an adverse effect on one or more historic properties. The Commission seeks comment on whether allowing collocations without individual Section 106 review in these circumstances would rapidly make available a significant amount of additional infrastructure to support wireless broadband deployment without adverse impacts. In particular, the Commission notes that the vast majority of towers that have been reviewed under the NPA have had no adverse effects on historic properties, and the Commission is aware of no reason to believe that Twilight Towers are any different in that regard. Moreover, these towers have been standing for 12 years or more and, in the vast majority of cases, no adverse effects have been brought to the Commission's attention.

59. Although the Commission seeks comment on such an approach, the Commission is mindful of the concerns that have been expressed by Tribal Nations and SHPOs throughout the discussions on this matter that simply allowing collocations to proceed would not permit review in those cases where an underlying tower may have undetermined adverse effects. In particular, Tribal Nations have expressed concern that some of the towers that were constructed between 2001 and 2005 may have effects on properties of religious and cultural significance that have not been noticed because their people are far removed from their traditional homelands. The Commission seeks comment on these concerns. As an initial matter, the Commission seeks comment on the Commission's underlying assumption regarding the likelihood that Twilight Towers had in their construction or continue to have adverse effects that have not been noted. To the extent such effects exist, what is the likelihood that they could be mitigated, and what is the likelihood that a new collocation would exacerbate those effects?

60. The Commission further seeks comment on any alternative approaches. For example, should the Commission

considers a tower-by-tower process under which proposed collocations on Twilight Towers would trigger a streamlined, time-limited individual review, along the lines of the process discussed in the 2016 Twilight Towers draft term sheet? If the Commission were to adopt such an approach, what elements should be included? For example, some in the industry have recommended a tower-by-tower approach that is voluntary and allows tower owners to submit a tower for review as market conditions justify, involves same processes and systems that are used for new and modified towers, asks ACHP to direct SHPOs and Tribal Historic Preservation Officers (THPOs) to submit prompt comments on such towers, and imposes no monetary penalty on tower owners. The Commission seeks comment on whether to adopt this approach. Should towers be categorized, such that, for example, public safety towers receive priority for streamlined review? Alternatively, to what extent are there existing processes that function efficiently to allow collocations on Twilight Towers? Generally, given what the Commission says above about the text of the Commission's rule, the Commission does not anticipate taking any enforcement action or imposing any penalties based on good faith deployment during the Twilight Tower period.

61. The Commission also seeks comment on the procedural vehicle through which any solution should be implemented. Would permitting collocation on Twilight Towers require either an amendment to the Collocation NPA or another program alternative under 36 CFR 800.14(b)? Is one form of program alternative preferable to another, and if so, why? If the Commission were to pursue a streamlined or other alternative review procedure, would that require an amendment to the Collocation NPA or other program alternative?

4. Collocations on Other Non-Compliant Towers

62. Finally, the Commission invites comment on whether the Commission should take any measures, and if so what, to facilitate collocations on non-compliant towers constructed after March 7, 2005. The Commission notes that unlike in the case of the Twilight Towers, the rules in effect when these towers were constructed explicitly required compliance with the review procedures set forth in the NPA. The Commission invites commenters to propose procedures, including review processes, time frames, criteria for eligibility, and other measures, to address any or all of these towers.

## II. Notice of Inquiry

63. In this section, the Commission examines and seeks comment on the scope of Sections 253(a) and 332(c)(7) of the Communications Act and any new or updated guidance or determinations the Commission should provide pursuant to its authority under those provisions, including through the issuance of a Declaratory Ruling.

### *A. Intersection of Sections 253(a) and 332(c)(7)*

64. Both Section 253(a) and Section 332(c)(7) ban State or local regulations that ''prohibit or have the effect of prohibiting'' service. Both sections also proscribe State and local restrictions that unreasonably discriminate among service providers. These sections thus appear to impose the same substantive obligations on State and local governments, though the remedies provided under each are different. There are court decisions holding that ''the legal standard is the same under either [Section 253 or 332(c)(7)],'' and that there is ''nothing suggesting that Congress intended a different meaning of the text 'prohibit or have the effect of prohibiting' in the two statutory provisions, enacted at the same time, in the same statute.'' The Commission seeks comment on whether there is any reason to conclude that the substantive obligations of these two provisions differ, and if so in what way. Do they apply the same standards in the same or similar situations? Do they impose different standards in different situations? The Commission invites commenters to explain how and why. The Commission also seeks comment on the interaction between Sections 253 and 332(c)(7).

### *B. ''Prohibit or Have the Effect of Prohibiting''*

65. A number of courts have interpreted the phrase ''prohibit or have the effect of prohibiting,'' as it appears in both Sections 253(a) and 332(c)(7), but they have not been consistent in their views. Under Section 253(a), the First, Second, and Tenth Circuits have held that a State or local legal requirement would be subject to preemption if it *may* have the effect of prohibiting the ability of an entity to provide telecommunications services, while the Eighth and Ninth Circuits have erected a higher burden and insisted that ''a plaintiff suing a municipality under Section 253(a) must show actual or effective prohibition, rather than the mere possibility of prohibition.'' By the same token, different courts have imposed inconsistent burdens of proof to establish that localities violated Section 332(c)(7) by improperly denying siting application. The First, Fourth, and Seventh Circuits have imposed a ''heavy burden'' of proof on applicants to establish a lack of alternative feasible sites, requiring them to show ''not just that *this* application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try.'' By contrast, the Second, Third, and Ninth Circuits have held that an applicant must show only that its proposed facilities are the ''least intrusive means'' for filling a coverage gap in light of the aesthetic or other values that the local authority seeks to serve. The Commission invites commenters to address these issues of statutory interpretation so the Commission may have the benefit of a full range of views from the interested parties as the Commission determines what action, if any, the Commission should take to resolve them. The Commission also invites parties to address whether there is some new theory altogether that the Commission should consider.

66. The Commission also seeks comment on the proper role of aesthetic considerations in the local approval process. The use of aesthetic considerations is not inherently improper; many courts have held that municipalities may, without necessarily violating Section 332(c)(7), deny siting applications on the grounds that the proposed facilities would adversely affect an area's aesthetic qualities, *provided* that such decisions are not founded merely on ''generalized concerns'' about aesthetics but are supported by ''substantial evidence contained in a written record'' about the impact of specific facilities on particular geographic areas or communities. The Commission seeks comment on whether it should provide more specific guidance on how to distinguish legitimate denials based on evidence of specific aesthetic impacts of proposed facilities, on the one hand, from mere ''generalized concerns,'' on the other.

67. Finally, the Commission notes that WTB's *Streamlining PN* sought comment on application processing fees and charges for the use of rights of way. The Commission invites parties to comment on similar issues relating to the application of section 332(c)(7)'s ''prohibit or have the effect of prohibiting'' language on infrastructure siting on properties beyond rights of way. For instance, the Commission

seeks comment on the up-front application fees that State or local government agencies impose on parties submitting applications for authority to construct or modify wireless facilities in locations other than rights of way. Can those fees, in some instances, ''prohibit or have the effect of prohibiting'' service? For instance, are those fees cost based? If commenters believe a particular State or locality's application fees are excessive, the Commission invites them to provide detailed explanations for that view and to explain how such fees might be inconsistent with section 332 of the Act. Relatedly, do wireless siting applicants pay fees comparable to those paid by other parties for similar applications, and if not, are there instances in which such fees violate section 332's prohibition of regulations that ''unreasonably discriminate among providers of functionally equivalent services''?

68. The Commission also seeks similar information about the recurring charges—as well as the other terms, conditions, or restrictions—that State or local government agencies impose for the siting of wireless facilities on publicly owned or controlled lands, structures such as light poles or water towers, or other resources other than rights of way. Do such fees or practices ''prohibit or have the effect of prohibiting'' service, or do they ''unreasonably discriminate among providers of functionally equivalent services? Are there disparities between the charges or other restrictions imposed on some parties by comparison with those imposed on others? Do any agencies impose charges or other requirements that commenting parties believe to be particularly burdensome, such as franchise fees based on a percentage of revenues? Are other aspects of the process for obtaining approval particularly burdensome? Commenters should explain their concerns in sufficient detail to allow State and local governments to respond and to allow the Commission to determine whether it should provide guidance on these issues.

*C. ''Regulations'' and ''Other Legal Requirements''*

69. The terms of Section 253(a) specify that a ''statute,'' ''regulation,'' or ''other legal requirement'' may be preempted, while the terms of Section 332(c)(7) refer to ''decisions'' concerning wireless facility siting and the ''regulation'' of siting. The Commission seeks comment on how those terms should be interpreted. For instance, do the terms ''statute,'' ''regulation,'' and ''legal requirement'' in Section 253(a) have essentially the same meaning as the parallel terms ''regulation'' and ''decisions'' in Section 332(c)(7)? The Commission has held in the past that the terminology in Section 253(a) quoted above ''recognizes that State and local barriers to entry could come from sources other than statutes and regulations'' and ''was meant to capture a broad range of state and local actions'' that could pose barriers to entry—including agreements with a single party that result in depriving other parties of access to rights of way. The Commission believes there is a reasonable basis for concluding that the same broad interpretation should apply to the language of Section 332, and the Commission seeks comment on this analysis.

70. The Commission also seeks comment on the extent to which these statutory provisions apply to States and localities acting in a proprietary versus regulatory capacity, and on what constitutes a proprietary capacity. In the *2014 Infrastructure Order,* the Commission opined that the Spectrum Act and the rules and policies implementing it apply to localities' actions on siting applications when acting in their capacities as land-use regulators, but not when acting as managers of land or property that they own and operate primarily in their proprietary roles. The Order cited cases indicating that ''Sections 253 and 332(c)(7) do not preempt non-regulatory decisions of a State or locality acting in its proprietary capacity.'' The Commission seeks comment on whether the Commission should reaffirm or modify the *2014 Infrastructure Order*'s characterization of the distinction between State and local governments' regulatory roles versus their proprietary roles as ''owners'' of public resources. How should the line be drawn in the context of properties such as public rights of way (*e.g.,* highways and city streets), municipally-owned lampposts or water towers, or utility conduits? Should a distinction between regulatory and proprietary be drawn on the basis of whether State or local actions advance those government entities' interests as participants in a particular sphere of economic activity (proprietary), by contrast with their interests in overseeing the use of public resources (regulatory)? What about requests for proposals (RFPs) or contracts involving state or local entities? The Commission invites commenters to identify any States or local governments that have imposed restrictions on the installation of new facilities or the upgrading of existing facilities in public rights of way, and describe those restrictions and their impacts. Do such restrictions have characteristics or effects that are comparable to moratoria on processing applications?

*D. Unreasonable Discrimination*

71. The Commission seeks comment on whether certain types of facially neutral criteria that some localities may be applying when reviewing and evaluating wireless siting applications could run afoul of Section 253, Section 332(c)(7), or another provision of the Act. For instance, the Commission asks commenters to identify any State or local regulations that single out telecom-related deployment for more burdensome treatment than non-telecom deployments that have the same or similar impacts on land use, to explain how, and to address whether this type of asymmetric treatment violates Federal law.

72. The Commission also seeks comment on the extent to which localities may be seeking to restrict the deployment of utility or communications facilities above ground and attempt to relocate electric, wireline telephone, and other utility lines in that area to underground conduits. Obviously, it is impossible to operate wireless network facilities underground. Undergrounding of utility lines seems to place a premium on access to those facilities that remain above ground, such as municipally-owned street lights. Is there a particular way that Section 253 or 332(c)(7) should apply in that circumstance? More generally, the Commission seeks comment on parties' experience with undergrounding requirements, including how wireless facilities have been treated in communities that require undergrounding of utilities. The Commission also seeks comment on whether and how the Communications Act applies in such instances. For instance, may localities deny applications to construct new above-ground wireless structures in such areas, or deny applications to install collocated equipment on structures that may eventually be dismantled? Could ''undergrounding'' plans ''prohibit or have the effect of prohibiting'' service by causing suitable sites for wireless antennas to become scarce? The Commission seeks comment on parties' experiences with undergrounding generally.

73. Section 332(c)(7)(B)(i)(I) prohibits States and localities from unreasonably discriminating among providers of ''functionally equivalent services.'' The

Commission seeks comment on whether parties have encountered such discrimination, and ask that they provide specific examples. The Commission also seeks comment on what constitutes ''functionally equivalent services'' for this purpose. For instance, should entities that are considered to be utilities be viewed as an appropriate comparison? For the limited purpose of applying Section 332(c)(7)(B)(i)(I), can wireless and wireline services be considered ''functionally equivalent'' in some circumstances? Which types of discrimination are reasonable and which are unreasonable?

**III. Procedural Matters**

*A. Initial Regulatory Flexibility Analysis*

74. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities of the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided above. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

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

75. In this NPRM, the Commission examines how it may further remove or reduce regulatory impediments to wireless infrastructure investment and deployment in order to promote the rapid deployment of advanced mobile broadband service to all Americans. First, the NPRM seeks comment on certain measures or clarifications to expedite State and local processing of wireless facility siting applications pursuant to the Commission's authority under 332 of the Communications Act, including a ''deemed granted'' remedy in cases of unreasonable delay. Next, the Commission undertakes a comprehensive fresh look at the Commission's rules and procedures implementing the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (Section 106). As part of this review, the Commission seeks comment on potential measures to improve or clarify the Commission's Section 106 process, including in the area of fees paid to Tribal Nations in connection with their participation in the process, cases involving lack of response by relevant parties including affected Tribal Nations, and batched processing. The Commission also seeks comment on possible additional exclusions from Section 106 review, and the Commission reexamines the scope of the Commission's responsibility to review the effects of wireless facility construction under the NHPA and NEPA. Finally, the NPRM seeks comment on so-called ''Twilight Towers,'' wireless towers that were constructed during a time when the process for Section 106 review was unclear, that may not have completed Section 106 review as a result, and that are therefore not currently available for collocation without first undergoing review. The Commission seeks comment on various options addressing Twilight Towers, including whether to exclude collocations on such towers from Section 106 historic preservation review, subject to certain exceptions, or alternatively subjecting collocations on Twilight Towers to a streamlined, time-limited review. The Commission expects the measures on which the Commission seeks comment in this NPRM to be only a part of the Commission's efforts to expedite wireless infrastructure deployment and the Commission invites commenters to propose other innovative approaches to expediting deployment.

2. Legal Basis

76. The authority for the actions taken in this NPRM is contained in Sections 1, 2, 4(i), 7, 201, 253, 301, 303, 309, and 332 of the Communications Act of 1934, as amended 47 U.S.C. 151, 152, 154(i), 157, 201, 253, 301, 303, 309, and 332, 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, 54 U.S.C. 306108.

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

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

78. The NPRM seeks comment on potential rule changes regarding State, 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, particularly small entities that are Commission licensees as well as non-licensees, the Commission classifies and quantifies them in the remainder of this section. The NPRM seeks comment on the Commission's description and estimate of the number of small entities that may be affected by the Commission's actions in this proceeding.

79. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data published in 2012 indicate that there were 89,476 local 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.

80. *Wireless Telecommunications Carriers (except Satellite).* This industry

comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

81. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by the Commission's actions today. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

82. *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. All such entities in this category are wireless, therefore the Commission applies the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which the SBA's small entity size standard is defined as those entities employing 1,500 or fewer persons. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. The Commission notes that many of the licensees in this category are individuals and not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities that may be affected by the Commission's actions in this proceeding.

83. *Public Safety Radio Licensees.* Public Safety Radio Pool licensees as a general matter, include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. Because of the vast array of public safety licensees, the Commission has not developed a small business size standard specifically applicable to public safety licensees. For this category the Commission applies the SBA's definition for Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications and for which the small entity size standard is defined as those entities employing 1,500 or fewer persons. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, the Commission includes under public safety services the number of government entities affected. According to Commission records, there are a total of approximately 133,870 licenses within these services. There are 3,121 licenses in the 4.9 GHz band, based on an FCC Universal Licensing System search of March 29, 2017. The Commission estimates that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

84. *Private Land Mobile Radio Licensees.* Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The SBA's definition for Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications and for which the small entity size standard is defined as those entities employing 1,500 or fewer persons. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. According to the Commission's records, there are a total of 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz, which is the range affected by this NPRM. The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

85. *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.

86. With respect to the first category, Profit-based Spectrum use, the size standards established by the Commission define ''small entity'' for MAS licensees as an entity that has average annual gross revenues of less than $15 million over the three previous calendar years. A ''Very small business'' is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than $3

million over the preceding three calendar years. The SBA has approved these definitions. The majority of MAS operators are licensed in bands where the Commission has implemented a geographic area licensing approach that requires the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 Economic Area market area MAS authorizations. The Commission's licensing database also indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service. In 2001, an auction for 5,104 MAS licenses in 176 EAs was conducted. Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

87. With respect to the second category, Internal Private Spectrum use consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The applicable definition of small entity is 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, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by the Commission's action.

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

89. *BRS*—In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

90. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

91. *EBS*—The SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 2,336 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees. U.S. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. To gauge small business prevalence for these cable services the Commission must, however, use the most current census data for the previous category of Cable and Other Program Distribution and its associated size standard which was all such firms having $13.5 million or less in annual receipts. According to U.S. Census Bureau data for 2007, there were a total of 996 firms in this category that operated for the entire year. Of this total, 948 firms had annual receipts of under $10 million, and 48 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

92. *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.

93. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less, 25 had annual receipts between $25,000,000 and $49,999,999 and 70 had annual receipts of $50,000,000 or more. Based on this data the Commission therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

94. The Commission has estimated the number of licensed commercial television stations to be 1,384. Of this total, 1,264 stations (or about 91 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

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

96. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

97. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of June 2, 2016, about 11,386 (or about 99.9 percent) of 11,395 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial radio stations to be 11,415. The Commission notes that it has also estimated the number of licensed NCE radio stations to be 4,101. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

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

99. *FM Translator Stations and Low Power FM Stations.* FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICS Code as licensees of radio stations. This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard which consists of all radio stations whose annual receipts are $38.5 million dollars or less. U.S. Census data for 2012 indicate that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Based on U.S. Census data, the Commission concludes that the majority of FM Translator Stations and Low Power FM Stations are small.

100. *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.

101. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' The category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

102. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Thus, a majority of ''All Other Telecommunications'' firms potentially affected by the Commission's action can be considered small.

103. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), the 39 GHz Service (39 GHz), the 24 GHz Service, and the Millimeter Wave Service where licensees can choose between common carrier and non-common carrier status. The SBA nor the Commission has defined a small business size standard for microwave services. For purposes of this IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons is considered small. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012, show that there were 967 firms in this category that operated for the entire year. Of this total, 955 had employment of 999 or fewer, and 12 firms had employment of 1,000 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 the Commission's proposed action.

104. According to Commission data in the Universal Licensing System (ULS) as of September 22, 2015 there were approximately 61,970 common carrier fixed licensees, 62,909 private and public safety operational-fixed licensees, 20,349 broadcast auxiliary radio licensees, 412 LMDS licenses, 35 DEMS licenses, 870 39 GHz licenses, and five 24 GHz licenses, and 408 Millimeter Wave licenses in the microwave services. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

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

106. As of March 1, 2017, the ASR database includes approximately 122,157 registration records reflecting a ''Constructed'' status and 13,987 registration records reflecting a ''Granted, Not Constructed'' status. These figures include both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which the Commission 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 therefore cannot estimate the number of tower owners that would be subject to the rules on which the Commission seeks comment. Moreover, the SBA has not developed a size standard for small businesses in the category ''Tower Owners.'' Therefore, the Commission is unable to determine the number of non-licensee tower owners that are small entities. The Commission believes, however, that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands, and that nearly all of these qualify as small businesses under the SBA's definition for ''All Other Telecommunications.'' The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Thus, a majority of ''All Other Telecommunications'' firms potentially affected by the Commission's action can be considered small. In addition, there may be other non-licensee owners of other wireless infrastructure, including DAS and small cells, that might be affected by the measures on which the Commission seeks comment. The Commission does not have any basis for estimating the number of such non-licensee owners that are small entities.

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

107. The NPRM seeks comment on potential rule changes that may affect reporting, recordkeeping and other compliance requirements. Specifically the NPRM seeks comment on a specific NHPA submission process known as batching. Currently, a streamlined process for certain facilities associated

with building out the Positive Train Control (PTC) railroad safety system is in effect whereby eligible facilities may be submitted to State Historic Preservation Officers (SHPOs) and through the Tower Construction Notification System (TCNS) in batches instead of individually. The NPRM seeks comment on whether the Commission should require SHPOs and Tribal Historic Preservation Officers (THPOs) to review non-PTC facilities in batched submissions as well. If adopted, this may require modifications to reporting or other compliance requirements for small entities and or jurisdictions to enable such submissions. The Commission anticipates that batch rather than individual submissions will add no additional burden to small entities and may reduce the cost and delay associated with the deployment of wireless infrastructure. In addition, the NPRM seeks comment on whether the current Section 106 process can be revised in a manner that would permit applicants to self-certify their compliance with the Commission's Section 106 process and therefore proceed once they meet the Commission's notification requirements, without requiring Commission involvement. This self-certifying process may also require additional reporting or other compliance requirements for small entities. Similarly, the Commission anticipates that a self-certification process will reduce the cost and delay associated with the deployment of wireless infrastructure for small entities by expediting the current Section 106 process.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

108. 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 or reporting requirements under the rule for 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 small entities.

109. In this proceeding, the Commission seeks to examine regulatory impediments to wireless infrastructure investment and deployment, and how the Commission may remove or reduce such impediments consistent with the law and the public interest. The Commission anticipates that the steps on which the NPRM seeks comment will help reduce burdens on small entities that may need to deploy wireless infrastructure by reducing the cost and delay associated with the deployment of such infrastructure. As discussed below, however, certain proposals may impose regulatory compliance costs on small jurisdictions.

110. The NPRM seeks comment on potential ways to expedite wireless facility deployment. First, it seeks comment on certain measures or clarifications to expedite State and local processing of wireless facility siting applications pursuant to the Commission's authority under Section 332 of the Communications Act. Specifically, the NPRM proposes to adopt one or more of three mechanisms for implementing a ''deemed granted'' remedy for State and local agencies' failure to satisfy their obligations under Section 332(c)(7)(B)(ii) to act on applications outside the context of the Spectrum Act, including irrebuttable presumption, lapse of State and local governments' authority, and a preemption rule. The NPRM also seeks comment on how to quantify a ''reasonable period of time'' within which to act on siting applications. Specifically, the NPRM asks commenters to discuss whether the Commission should consider adopting different time frames for review of facility deployments not covered by Section 6409 of the Spectrum Act, by identifying more narrowly defined classes of deployments and distinct reasonable time frames to govern such classes. The NPRM also seeks comment on what time periods would be reasonable (outside the Spectrum Act context) for any new categories of applications, and on what factors the Commission should consider in making such a decision. The NPRM also seeks comment on whether the Commission should provide further guidance to address situations in which it is not clear when the shot clock should start running, or in which States and localities on one hand, and industry on the other, disagree on when the time for processing an application begins, and on whether there are additional steps that should be considered to ensure that a deemed granted remedy achieves its purpose of expediting review.

111. In addition, the NPRM seeks comment on Moratoria. The Commission clarified in the *2014 Infrastructure Order* that the shot clock deadline applicable to each application ''runs regardless of any moratorium.'' The NPRM asks commenters to submit specific information about whether some localities are continuing to impose moratoria or other restrictions on the filing or processing of wireless siting applications, including identification of the specific entities engaging in such actions and description of the effect of such restrictions on parties' ability to deploy network facilities and provide service to consumers. The NPRM also proposes to take any additional actions necessary, such as issuing an order or declaratory ruling providing more specific clarifications of the moratorium ban or preempting specific State or local moratoria. The proposed measures should reduce existing regulatory costs for small entities that construct or deploy wireless infrastructure. The Commission invites commenters to discuss the economic impact of any of these proposed measures on small entities, including small jurisdictions, and on any alternatives that would reduce the economic impact on such entities.

112. Second, the NPRM undertakes a fresh look at the Commission's rules and procedures implementing NEPA and the NHPA as they relate to the Commission's implementation of Title III of the Act in the context of wireless infrastructure deployment. The NPRM seeks comment on potential measures in several areas that could improve the efficiency of the Commission's review under the NHPA and NEPA, including in the areas of fees, addressing delays, and batched processing. Specifically, the NPRM seeks comment on the costs, benefits, and time requirements associated with the historic preservation review process under Section 106 of the NHPA, including SHPO and Tribal Nation review, as well as on the costs and relative benefits of the Commission's NEPA rules. The NPRM also seeks comment on potential process reforms regarding Tribal Fees, including fee amounts, when fees are requested, the legal framework of potential fee schedules, the delineation of Tribal Nation's geographic area of interest, and on potential remedies, dispute resolution, and possible negotiated alternatives.

113. The NPRM then seeks comment on other possible reforms to the Commission's NHPA process that may make it faster, including time limits and self-certification when no response to a Section 106 submission is provided, on whether the Commission should require SHPOs and THPOs to review non-PTC facilities in batched submissions, and if so, how such a process should work and

what sort of facilities would be eligible, and finally, whether there are additional procedural changes that the Commission should consider to improve the Section 106 review process in a manner that does not compromise its integrity.

114. Further, the NPRM seeks comment on ways to improve and further streamline the Commission's environmental compliance regulations while ensuring the Commission meets its NEPA obligations. Toward that end, the NPRM seeks comment on whether to revise the Commission's rules so that an EA is not required for siting in a floodplain when appropriate engineering or mitigation requirements have been met and on whether to expand the categories of undertakings that are excluded from Section 106 review, to include pole replacements, deployments in rights-of-way, and collocations based on their minimal potential to adversely affect historic properties. The NPRM also seeks comment on whether the Commission should revisit the Commission's interpretation of the scope of the Commission's responsibility to review the effects of wireless facility construction under the NHPA and NEPA. These potential changes to the Commission's rules and procedures implementing NEPA and the NHPA would reduce environmental compliance costs on entities that construct or deploy wireless infrastructure. These potential revisions are likely to provide an even greater benefit for small entities that may not have the compliance resources and economies of scale of larger entities. The Commission invites comment on ways in which the Commission can achieve its goals, but at the same time further reduce the burdens on small entities.

115. Third, the NPRM seeks comment on steps the Commission should take to develop a definitive solution for the Twilight Towers issue that will allow Twilight Towers to be used for collocations while respecting the integrity of the Section 106 process. Facilitating collocations on these towers will serve the public interest by making additional infrastructure available for wireless broadband services and the FirstNet public safety broadband network, as well as reduce the need for new towers, lessening the impact of new construction on the environment and on locations with historical and cultural significance, thereby reducing the associated regulatory burden, particularly the burden on small entities.

116. In particular, the NPRM seeks comment on whether to treat collocations on towers built between March 16, 2001 and March 7, 2005 that did not go through Section 106 historic preservation review in the same manner as collocations on towers built prior to March 16, 2001 that did not go through review. Under this approach, collocations on such towers would generally be excluded from Section 106 historic preservation review, subject to the same exceptions that currently apply for collocations on towers built on or prior to March 16, 2001. The Commission seeks comment on whether allowing collocations without individual Section 106 review in these circumstances would rapidly make available a significant amount of additional infrastructure to support wireless broadband deployment without adverse impacts. The NPRM also seeks comment on any alternative approaches and on the procedural vehicle through which any solution should be implemented. Finally, the NPRM invites comment on what measures, if any, should be taken to facilitate collocations on non-compliant towers constructed after March 7, 2005, including whether the Commission should pursue an alternative review process, or any other alternative approach, for any or all of these towers. These proposals would reduce the environmental compliance costs associated with collocations, especially for small entities that have limited financial resources. The Commission invites commenters to discuss the economic impact of any of the proposals for the solution to the Twilight Towers issue on small entities, including small jurisdictions, and on any alternatives that would reduce the economic impact on such entities.

117. For the options discussed in this NPRM, the Commission seeks comment on the effect or burden of the prospective regulation on small entities, including small jurisdictions, the extent to which the regulation would relieve burdens on small entities, and whether there are any alternatives the Commission could implement that could achieve the Commission's goals while at the same time minimizing or further reducing the burdens on small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

118. None.

*B. Initial Paperwork Reduction Act Analysis*

119. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

*C. Other Procedural Matters*

1. Ex Parte Rules—Permit-But-Disclose

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

in this proceeding should familiarize themselves with the Commission's ex parte rules.

121. In light of the Commission's trust relationship with Tribal Nations and Native Hawaiian Organizations (NHOs), and the Commission's obligation to engage in government-to-government consultation with them, the Commission finds that the public interest requires a limited modification of the ex parte rules in this proceeding. Tribal Nations and NHOs, like other interested parties, should file comments, reply comments, and ex parte presentations in the record in order to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process. But the Commission will exempt ex parte presentations involving elected and appointed leaders and duly appointed representatives of federally-recognized Tribal Nations and NHOs from the disclosure requirements in permit-but-disclose proceedings and the prohibitions during the Sunshine Agenda period. Specifically, presentations from elected and appointed leaders or duly appointed representatives of federally-recognized Tribal Nations or NHOs to Commission decision makers shall be exempt from disclosure. To be clear, while the Commission recognizes that consultation is critically important, the Commission emphasizes that the Commission will rely in its decision-making only on those presentations that are placed in the public record for this proceeding.

## IV. Ordering Clauses

122. Accordingly, *it is ordered,* pursuant to Sections 1, 2, 4(i), 7, 201, 253, 301, 303, 309, and 332 of the Communications Act of 1934, as amended 47 U.S.C. 151, 152, 154(i), 157, 201, 253, 301, 303, 309, and 332, 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, 54 U.S.C. 306108, that this Notice of Proposed Rulemaking and Notice of Inquiry *is hereby adopted*.

123. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2017–09431 Filed 5–9–17; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR 1, 15, 20, and 54

**[GN Docket No. 16–46; FCC 17–46]**

## FCC Seeks Comment and Data on Actions To Accelerate Adoption and Accessibility of Broadband-Enabled Health Care Solutions and Advanced Technologies

**AGENCY:** Federal Communications Commission.

**ACTION:** Request for comments.

**SUMMARY:** The Federal Communications Commission (FCC) seeks comment, data, and information on a variety of regulatory, policy, and infrastructure issues related to the emerging broadband-enabled health and care ecosystem. The FCC seeks to ensure that consumers—from major cities to rural and remote areas, Tribal lands, and underserved regions—can access potentially lifesaving health technologies and services, like telehealth and telemedicine, which are enabled by broadband connectivity. The anticipated record will allow the Commission and its Connect2HealthFCC Task Force (Task Force) to gain a broader understanding about the current state of broadband health connectivity. The record will also be used by the Task Force to make future recommendations to the Commission.

**DATES:** Submit comments on or before May 24, 2017, and reply comments on or before June 8, 2017.

**ADDRESSES:** You may submit comments, identified by GN Docket No. 16–46, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/* (click the ''submit a filing'' tab). Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and the applicable docket number: GN Docket No. 16–46.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8:00 a.m. to 7:00 p.m. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail must be addressed to 445 12th Street SW., Washington, DC 20554.

*Additional Filing Instruction:* To the extent feasible, parties should email a copy of their comments to the Task Force's email box, at *connect2health@fcc.gov*. In the email, please insert ''Comments in GN Docket No. 16–46'' in the subject line. Copies of all filings will be available in GN Docket No. 16–46 through ECFS and are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554, telephone (202) 418–0270. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by email at: *fcc504@fcc.gov;* phone: 202–418–0530 or TTY: 202–418–0432.

**FOR FURTHER INFORMATION CONTACT:** For further information about this Document, please contact Ben Bartolome, Special Counsel, Connect2HealthFCC Task Force, at (770) 935–3383, or via email at *connect2health@fcc.gov* (inserting ''Question re GN Docket No. 16–46'' in the subject line). Press inquiries should be directed to Katie Gorscak, Communications Director, Connect2HealthFCC Task Force, at (202)