Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); or Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 2, 2018.

Michael L. Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend the table in § 180.593(a) as follows:

■ a. Add alphabetically the entries for ''Cherry subgroup 12–12A''; ''Corn, sweet, forage''; ''Corn, sweet, kernel plus cob with husks removed''; ''Corn, sweet, stover''; ''Cottonseed subgroup 20C''; ''Fruit, pome, group 11–10''; ''Nut, tree group 14–12''; Peach subgroup 12–12B''; and ''Plum subgroup 12–12C''.

■ b. Remove the entries for ''Cotton, undelinted seed''; ''Fruit, pome, group 11''; ''Fruit, stone, group 12, except plum''; ''Nut, tree, group 14''; ''Pistachio''; and ''Plum.''

§ 180.593 Etoxazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cherry subgroup 12–12A	1.0
* * * * *	
Corn, sweet, forage	1.5
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	5.0
* * * * *	
Cottonseed subgroup 20C	0.05
Fruit, pome, group 11–10	0.20
* * * * *	
Nut, tree group 14–12	0.01
* * * * *	
Peach subgroup 12–12B	1.0
* * * * *	
Plum subgroup 12–12C	0.15
* * * * *	

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[FR Doc. 2018–22279 Filed 10–12–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 17–79, WC Docket No. 17–84; FCC 18–133]

Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (''Commission'' or ''FCC'') issues guidance and adopts rules to streamline the wireless infrastructure siting review process to facilitate the deployment of next-generation wireless facilities. Specifically, in the Declaratory Ruling, the Commission identifies specific fee levels for the deployment of Small Wireless Facilities, and it addresses state and local consideration of aesthetic concerns that effect the deployment of Small Wireless Facilities. In the Order, the Commission addresses the ''shot clocks'' governing the review of wireless infrastructure deployments and establishes two new shot clocks for Small Wireless Facilities.

DATES: Effective January 14, 2019.

FOR FURTHER INFORMATION CONTACT: Jiaming Shang, Deputy Chief (Acting) Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, (202) 418–1303, email *Jiaming.shang@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Ruling and Third Report and Order (Declaratory Ruling and Order), WT Docket No. 17–79 and WC Docket No. 17–84; FCC 18–133, adopted September 26, 2018 and released September 27, 2018. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at

Portals II, 445 12th Street SW, Room CY–B402, Washington, DC 20554; the contractor's website, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com.* Copies of the Declaratory Ruling and Order also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket 17–79 and WC Docket No. 17–84. Additionally, the complete item is available on the Federal Communications Commission's website at *http://www.fcc.gov.*

Synopsis

I. Declaratory Ruling

1. In the Declaratory Ruling, the Commission notes that a number of appellate courts have articulated different and often conflicting views regarding the scope and nature of the limits Congress imposed on state and local governments through Sections 253 and 332. In light of these diverging views, Congress's vision for a consistent, national policy framework, and the need to ensure that the Commission's approach continues to make sense in light of the relatively new trend towards the large-scale deployment of Small Wireless Facilities, the Commission takes the opportunity to clarify and update the FCC's reading of the limits Congress imposed. The Commission does so in three main respects.

2. First, the Commission expresses its agreement with the views already stated by the First, Second, and Tenth Circuits that the ''materially inhibit'' standard articulated in 1997 by the Clinton-era FCC's *California Payphone* decision is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.

3. Second, the Commission notes, as numerous courts have recognized, that state and local fees and other charges associated with the deployment of wireless infrastructure can effectively prohibit the provision of service. At the same time, courts have articulated various approaches to determining the types of fees that run afoul of Congress's limits in Sections 253 and 332. The Commission thus clarifies the particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities at issue in this decision. Namely, fees are only permitted to the extent that they represent a reasonable approximation of the local government's objectively reasonable costs and are non-discriminatory. In this section, the Commission also identifies specific fee levels for the deployment of Small Wireless Facilities that presumptively comply with this standard. The Commission does so to help avoid unnecessary litigation, while recognizing that it is the standard itself, not the particular, presumptive fee levels the Commission articulates, that ultimately will govern whether a particular fee is allowed under Sections 253 and 332. So, fees above those levels would be permissible under Sections 253 and 332 to the extent a locality's actual, reasonable costs (as measured by the standard above) are higher.

4. Finally, the Commission focuses on a subset of other, non-fee provisions of state and local law that could also operate as prohibitions on service. The Commission does so in particular by addressing state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities. The Commission notes that the Small Wireless Facilities that are the subject of this Declaratory Ruling remain subject to the Commission's rules governing Radio Frequency (RF) emissions exposure.

A. Overview of the Section 253 and Section 332(c)(7) Framework Relevant to Small Wireless Facilities Deployment

5. As an initial matter, the Commission notes that its Declaratory Ruling applies with equal measure to the effective prohibition standard that appears in both Sections 253(a) and 332(c)(7). This ruling is consistent with the basic canon of statutory interpretation that identical words appearing in neighboring provisions of the same statute should be interpreted to have the same meaning. Moreover, both of these provisions apply to wireless telecommunications services as well as to commingled services and facilities.

6. As explained in *California Payphone* and reaffirmed here, a state or local legal requirement will have the effect of prohibiting wireless telecommunications services if it materially inhibits the provision of such services. *California Payphone Ass'n,* 12 FCC Rcd 14191 (1997). The Commission clarifies that an effective prohibition occurs where a state or local legal requirement materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities. Under the *California Payphone* standard, a state or local legal requirement could materially inhibit service in numerous ways—not only by rendering a service provider unable to provide an existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services. Thus, an effective prohibition includes materially inhibiting additional services or improving existing services.

7. The Commission's reading of Section 253(a) and Section 332(c)(7)(B)(i)(II) reflects and supports a marketplace in which services can be offered in a multitude of ways with varied capabilities and performance characteristics consistent with the policy goals in the 1996 Act and the Communications Act. To limit Sections 253(a) and 332(c)(7)(B)(i)(II) to protecting only against coverage gaps or the like would be to ignore Congress's contemporaneously-expressed goals of ''promot[ing] competition[,] . . . secur[ing] . . . higher quality services for American telecommunications consumers and encourage[ing] the rapid deployment of new telecommunications technologies.'' In addition, as the Commission recently explained, the implementation of the Act ''must factor in the fundamental objectives of the Act, including the deployment of a ''rapid, efficient . . . wire and radio communication service with adequate facilities at reasonable charges' and 'the development and rapid deployment of new technologies, products and services for the benefit of the public . . . without administrative or judicial delays[, and] efficient and intensive use of the electromagnetic spectrum.' '' These provisions demonstrate that the Commission's interpretation of Section 253 and Section 332(c)(7)(B)(i)(II) is in accordance with the broader goals of the various statutes that the Commission is entrusted to administer.

8. *California Payphone* further concluded that providers must be allowed to compete in a ''fair and balanced regulatory environment.'' As reflected in decisions such as the Commission's *Texas PUC Order,* a state or local legal requirement can function as an effective prohibition either because of the resulting ''financial burden'' in an absolute sense, or, independently, because of a resulting competitive disparity. *Public Utility Comm'n of Texas, et al., Pet. for Decl. Ruling and/or Preemption of Certain Provisions of the Texas Pub. Util. Reg. Act of 1995,* 13 FCC Rcd 3460 (1997). The Commission clarifies that ''[a]

regulatory structure that gives an advantage to particular services or facilities has a prohibitory effect, even if there are no express barriers to entry in the state or local code; the greater the discriminatory effect, the more certain it is that entities providing service using the disfavored facilities will experience prohibition.'' This conclusion is consistent with both Commission and judicial precedent recognizing the prohibitory effect that results from a competitor being treated materially differently than similarly-situated providers. The Commission provides its authoritative interpretation below of the circumstances in which a ''financial burden,'' as described in the *Texas PUC Order,* constitutes an effective prohibition in the context of certain state and local fees.

B. State and Local Fees

9. Cognizant of the changing technology and its interaction with regulations created for a previous generation of service, the Commission sought comment on the scope of Sections 253 and 332(c)(7) and on any new or updated guidance the Commission should provide, potentially through a Declaratory Ruling. In particular, the Commission sought comment on whether it should provide further guidance on how to interpret and apply the phrase ''prohibit or have the effect of prohibiting.''

10. The Commission concludes that ROW access fees, and fees for the use of government property in the ROW, such as light poles, traffic lights, utility poles, and other similar property suitable for hosting Small Wireless Facilities, as well as application or review fees and similar fees imposed by a state or local government as part of their regulation of the deployment of Small Wireless Facilities inside and outside the ROW, violate Sections 253 or 332(c)(7) unless these conditions are met: (1) The fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.

11. *Capital Expenditures.* Apart from the text, structure, and legislative history of the 1996 Act, an additional, independent justification for the Commission's interpretation follows from the simple, logical premise, supported by the record, that state and local fees in one place of deployment necessarily have the effect of reducing the amount of capital that providers can use to deploy infrastructure elsewhere, whether the reduction takes place on a local, regional or national level. The Commission is persuaded that providers and infrastructure builders, like all economic actors, have a finite (though perhaps fluid) amount of resources to use for the deployment of infrastructure. This does not mean that these resources are limitless, however. The Commission concludes that fees imposed by localities, above and beyond the recovery of localities' reasonable costs, materially and improperly inhibit deployment that could have occurred elsewhere. This and regulatory uncertainty created by such effectively prohibitive conduct creates an appreciable impact on resources that materially limits plans to deploy service. This record evidence emphasizes the importance of evaluating the effect of fees on Small Wireless Facility deployment on an aggregate basis. The record persuades the Commission that fees associated with Small Wireless Facility deployment lead to ''a substantial increase in costs''—particularly when considered in the aggregate—thereby ''plac[ing] a significant burden'' on carriers and materially inhibiting their provision of service contrary to Section 253 of the Act.

12. The record reveals that fees above a reasonable approximation of cost, even when they may not be perceived as excessive or likely to prohibit service in isolation, will have the effect of prohibiting wireless service when the aggregate effects are considered, particularly given the nature and volume of anticipated Small Wireless Facility deployment. The record reveals that these effects can take several forms. In some cases, the fees in a particular jurisdiction will lead to reduced or entirely forgone deployment of Small Wireless Facilities in the near term for that jurisdiction. In other cases, where it is essential for a provider to deploy in a given area, the fees charged in that geographic area can deprive providers of capital needed to deploy elsewhere, and lead to reduced or forgone near-term deployment of Small Wireless Facilities in other geographic areas. In both of those scenarios the bottom-line outcome on the national development of 5G networks is the same—diminished deployment of Small Wireless Facilities critical for wireless service and building out 5G networks.

13. *Relationship to Section 332.* The Commission clarifies that the statutory phrase ''prohibit or have the effect of prohibiting'' in Section 332(c)(7)(B)(i)(II) has the same meaning as the phrase ''prohibits or has the effect of prohibiting'' in Section 253(a). There is no evidence to suggest that Congress intended for virtually identical language to have different meanings in the two provisions. Instead, the Commission finds it more reasonable to conclude that the language in both sections should be interpreted to have the same meaning and to reflect the same standard, including with respect to preemption of fees that could ''prohibit'' or have ''the effect of prohibiting'' the provision of covered service. Both sections were enacted to address concerns about state and local government practices that undermined providers' ability to provide covered services, and both bar state or local conduct that prohibits or has the effect of prohibiting service.

14. To be sure, Sections 253 and 332(c)(7) may relate to different categories of state and local fees. Ultimately, the Commission needs not resolve here the precise interplay between Sections 253 and 332(c)(7). It is enough for it to conclude that, collectively, Congress intended for the two provisions to cover the universe of fees charged by state and local governments in connection with the deployment of telecommunications infrastructure. Given the analogous purposes of both sections and the consistent language used by Congress, the Commission finds the phrase ''prohibit or have the effect of prohibiting'' in Section 332(c)(7)(B)(i)(II) should be construed as having the same meaning and governed by the same preemption standard as the nearly identical language in Section 253(a).

15. *Application of the Interpretations and Principles Established Here.* Consistent with the interpretations above, the requirement that compensation be limited to a reasonable approximation of objectively reasonable costs and be non-discriminatory applies to all state and local government fees paid in connection with a provider's use of the ROW to deploy Small Wireless Facilities including, but not limited to, fees for access to the ROW itself, and fees for the attachment to or use of property within the ROW owned or controlled by the government (*e.g.,* street lights, traffic lights, utility poles, and other infrastructure within the ROW suitable for the placement of Small Wireless Facilities). This interpretation applies with equal force to any fees reasonably related to the placement, construction, maintenance, repair, movement, modification, upgrade, replacement, or removal of Small Wireless Facilities within the ROW, including, but not limited to, application or permit fees such as siting applications, zoning variance applications, building permits, electrical

permits, parking permits, or excavation permits.

16. Applying the principles established in this Declaratory Ruling, a variety of fees not reasonably tethered to costs appear to violate Sections 253(a) or 332(c)(7) in the context of Small Wireless Facility deployments. For example, the Commission agrees with courts that have recognized that gross revenue fees generally are not based on the costs associated with an entity's use of the ROW, and where that is the case, are preempted under Section 253(a). In addition, although the Commission rejects calls to preclude a state or locality's use of third party contractors or consultants, or to find all associated compensation preempted, the Commission makes clear that the principles discussed herein regarding the reasonableness of cost remain applicable. Thus, fees must not only be limited to a reasonable approximation of costs, but in order to be reflected in fees the *costs themselves* must also be reasonable. Accordingly, any unreasonably high costs, such as excessive charges by third party contractors or consultants, may not be passed on through fees even though they are an actual ''cost'' to the government. If a locality opts to incur unreasonable costs, Sections 253 and 332(c)(7) do not permit it to pass those costs on to providers. Fees that depart from these principles are not saved by Section 253(c), as the Commission discusses below.

17. *Interpretation of Section 253(c) in the Context of Fees.* In this section, the Commission turns to the interpretation of several provisions in Section 253(c), which provides that state or local action that otherwise would be subject to preemption under Section 253(a) may be permissible if it meets specified criteria. Section 253(c) expressly provides that state or local governments may require telecommunications providers to pay ''fair and reasonable compensation'' for use of public ROWs but requires that the amounts of any such compensation be ''competitively neutral and nondiscriminatory'' and ''publicly disclosed.''

18. The Commission interprets the ambiguous phrase ''fair and reasonable compensation,'' within the statutory framework it outlined for Section 253, to allow state or local governments to charge fees that recover a reasonable approximation of the state or local governments' actual and reasonable costs. The Commission concludes that an appropriate yardstick for ''fair and reasonable compensation,'' and therefore an indicator of whether a fee violates Section 253(c), is whether it recovers a reasonable approximation of a state or local government's objectively reasonable costs of, respectively, maintaining the ROW, maintaining a structure within the ROW, or processing an application or permit.

19. The existence of Section 253(c) makes clear that Congress anticipated that ''effective prohibitions'' could result from state or local government fees, and intended through that clause to provide protections in that respect, as discussed in greater detail herein. Against that backdrop, the Commission finds it unlikely that Congress would have left providers entirely at the mercy of effectively unconstrained requirements of state or local governments. The Commission's interpretation of Section 253(c), in fact, is consistent with the views of many municipal commenters, at least with respect to one-time permit or application fees, and the members of the BDAC Ad Hoc Committee on Rates and Fees who unanimously concurred that one-time fees for municipal applications and permits, such as an electrical inspection or a building permit, should be based on the cost to the government of processing that application. The Ad Hoc Committee noted that ''[the] cost-based fee structure [for one-time fees] unanimously approved by the committee accommodates the different siting related costs that different localities may incur to review, and process permit applications, while precluding excessive fees that impede deployment.'' The Commission finds that the same reasoning should apply to other state and local government fees such as ROW access fees or fees for the use of government property within the ROW.

20. The Commission recognizes that state and local governments incur a variety of direct and actual costs in connection with Small Wireless Facilities, such as the cost for staff to review the provider's siting application, costs associated with a provider's use of the ROW, and costs associated with maintaining the ROW itself or structures within the ROW to which Small Wireless Facilities are attached. The Commission also recognizes that direct and actual costs may vary by location, scope, and extent of providers' planned deployments, such that different localities will have different fees under the interpretation set forth in this Declaratory Ruling.

21. Because the Commission interprets fair and reasonable compensation as a *reasonable approximation* of costs, it does not suggest that localities must use any specific accounting method to document the costs they may incur when determining the fees they charge for Small Wireless Facilities within the ROW. Moreover, in order to simplify compliance, when a locality charges both types of recurring fees identified above (*i.e.,* for access to the ROW and for use of or attachment to property in the ROW), the Commission sees no reason for concern with how it has allocated costs between those two types of fees. It is sufficient under the statute that the total of the two recurring fees reflects the total costs involved. Fees that cannot ultimately be shown by a state or locality to be a reasonable approximation of their costs, such as high fees designed to subsidize local government costs in another geographic area or accomplish some public policy objective beyond the providers' use of the ROW, are not ''fair and reasonable compensation . . . for *use* of the public rights-of-way'' under Section 253(c). Likewise, the Commission agrees with both industry and municipal commenters that excessive and arbitrary consulting fees or other costs should not be recoverable as ''fair and reasonable compensation,'' because they are not a function of the provider's ''use'' of the public ROW.

22. In addition to requiring that compensation be ''fair and reasonable,'' Section 253(c) requires that it be ''competitively neutral and nondiscriminatory.'' The Commission has previously interpreted this language to prohibit states and localities from charging fees on new entrants and not on incumbents. Courts have similarly found that states and localities may not impose a range of fees on one provider but not on another and even some municipal commenters acknowledge that governments should not discriminate on the fees charged to different providers. The record reflects continuing concerns from providers, however, that they face discriminatory charges. The Commission reiterates its previous determination that state and local governments may not impose fees on some providers that they do not impose on others. The Commission would also be concerned about fees, whether one-time or recurring, related to Small Wireless Facilities, that exceed the fees for other wireless telecommunications infrastructure in similar situations, and to the extent that different fees are charged for similar use of the public ROW.

23. *Fee Levels Likely to Comply with Section 253.* The Commission's interpretations of Section 253(a) and ''fair and reasonable compensation'' under Section 253(c) provides guidance for local and state fees charged with

respect to one-time fees generally, and recurring fees for deployments in the ROW. Following suggestions for the Commission to ''establish a presumptively reasonable 'safe harbor' for certain ROW and use fees,'' and to facilitate the deployment of specific types of infrastructure critical to the rollout of 5G in coming years, the Commission identifies in this section three particular types of fee scenarios and supply specific guidance on amounts that are presumptively not prohibited by Section 253. Informed by the its review of information from a range of sources, the Commission concludes that fees at or below these amounts presumptively do not constitute an effective prohibition under Section 253(a) or Section 332(c)(7) and are presumed to be ''fair and reasonable compensation'' under Section 253(c).

24. Based on its review of the Commission's pole attachment rate formula, which would require fees below the levels described in this paragraph, as well as small cell legislation in twenty states, local legislation from certain municipalities in states that have not passed small cell legislation, and comments in the record, the Commission presumes that the following fees would not be prohibited by Section 253 or Section 332(c)(7): (a) $500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional $100 for each Small Wireless Facility beyond five, or $1,000 for non-recurring fees for a new pole (*i.e.,* not a collocation) intended to support one or more Small Wireless Facilities, and (b) $270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW.

25. By presuming that fees at or below the levels above comply with Section 253, the Commission assumes that there would be almost no litigation by providers over fees set at or below these levels. Likewise, the Commission's review of the record, including the many state small cell bills passed to date, indicate that there should be only very limited circumstances in which localities can charge higher fees consistent with the requirements of Section 253. In those limited circumstances, a locality could prevail in charging fees that are above this level by showing that such fees nonetheless comply with the limits imposed by Section 253—that is, that they are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory. Allowing localities to charge fees above these levels upon this showing recognizes local variances in costs.

C. Other State and Local Requirements That Govern Small Facilities Deployment

26. There are also other types of state and local land-use or zoning requirements that may restrict Small Wireless Facility deployments to the degree that they have the effect of prohibiting service in violation of Sections 253 and 332. In this section, the Commission discusses how those statutory provisions apply to requirements outside the fee context both generally, and with particular focus on aesthetic and undergrounding requirements.

27. As discussed above, a state or local legal requirement constitutes an effective prohibition if it ''materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.'' The Commission's interpretation of that standard, as set forth above, applies equally to fees and to non-fee legal requirements. And as with fees, Section 253 contains certain safe harbors that permit some legal requirements that might otherwise be preempted by Section 253(a). Section 253(b) saves ''requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. And Section 253(c) preserves state and local authority to manage the public rights-of-way.

28. Given the wide variety of possible legal requirements, the Commission does not attempt here to determine which of every possible non-fee legal requirements are preempted for having the effect of prohibiting service, although the Commission's discussion of fees above should prove instructive in evaluating specific requirements. Instead, the Commission focuses on some specific types of requirements raised in the record and provide guidance on when those particular types of requirements are preempted by the statute.

29. *Aesthetics.* The Commission sought comment on whether deployment restrictions based on aesthetic or similar factors are widespread and, if so, how Sections 253 and 332(c)(7) should be applied to them. The Commission provides guidance on whether and in what circumstances aesthetic requirements violate the Act. This will help localities develop and implement lawful rules, enable providers to comply with these requirements, and facilitate the resolution of disputes. The Commission concludes that aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.

30. Like fees, compliance with aesthetic requirements imposes costs on providers, and the impact on their ability to provide service is just the same as the impact of fees. The Commission therefore draws on its analysis of fees to address aesthetic requirements. The Commission explained above that fees that merely require providers to bear the direct and reasonable costs that their deployments impose on states and localities should not be viewed as having the effect of prohibiting service and are permissible. Analogously, aesthetic requirements that are reasonable in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments are also permissible. In assessing whether this standard has been met, aesthetic requirements that are more burdensome than those the state or locality applies to similar infrastructure deployments are not permissible, because such discriminatory application evidences that the requirements are not, in fact, reasonable and directed at remedying the impact of the wireless infrastructure deployment. For example, a minimum spacing requirement that has the effect of materially inhibiting wireless service would be considered an effective prohibition of service.

31. Finally, in order to establish that they are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective—*i.e.,* they must incorporate clearly-defined and ascertainable standards, applied in a principled manner—and must be published in advance. ''Secret'' rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers' costs without providing any public benefit or addressing any public harm. Providers cannot design or implement rational plans for deploying Small Wireless Facilities if they cannot predict in advance what aesthetic requirements they will be obligated to satisfy to obtain permission to deploy a facility at any given site.

32. The Commission appreciates that at least some localities will require some time to establish and publish aesthetics

standards that are consistent with this Declaratory Ruling. Based on its review and evaluation of commenters' concerns, the Commission anticipates that such publication should take no longer than 180 days after publication of this decision in the **Federal Register**.

33. *Undergrounding requirements.* The Commission understands that some local jurisdictions have adopted undergrounding provisions that require infrastructure to be deployed below ground based, at least in some circumstances, on the locality's aesthetic concerns. A number of providers have complained that these types of requirements amount to an effective prohibition. In addressing this issue, the Commission first reiterates that while undergrounding requirements may well be permissible under state law as a general matter, any local authority to impose undergrounding requirements under state law does not remove the imposition of such undergrounding requirements from the provisions of Section 253. In this sense, the Commission notes that a requirement that *all* wireless facilities be deployed underground would amount to an effective prohibition given the propagation characteristics of wireless signals. Thus, undergrounding requirements can amount to effective prohibitions by materially inhibiting the deployment of wireless service.

34. *Minimum spacing requirements.* Some parties complain of municipal requirements regarding the spacing of wireless installations—*i.e.,* mandating that facilities be sited at least 100, 500, or 1,000 feet, or some other minimum distance, away from other facilities, ostensibly to avoid excessive overhead ''clutter'' that would be visible from public areas. The Commission acknowledges that while some such requirements may violate 253(a), others may be reasonable aesthetic requirements. For example, under the principle that any such requirements be reasonable and publicly available in advance, it is difficult to envision any circumstances in which a municipality could reasonably promulgate a new minimum spacing requirement that, in effect, prevents a provider from replacing its preexisting facilities or collocating new equipment on a structure already in use. Such a rule change with retroactive effect would almost certainly have the effect of prohibiting service under the standards the Commission articulate here. Therefore, such requirements should be evaluated under the same standards as other aesthetic requirements.

D. States and Localities Act in Their Regulatory Capacities When Authorizing and Setting Terms for Wireless Infrastructure Deployment in Public Rights of Way

35. The Commission confirms that it interpretations today extend to state and local governments' terms for access to public ROW that they own or control, including areas on, below, or above public roadways, highways, streets, sidewalks, or similar property, as well as their terms for use of or attachment to government-owned property within such ROW, such as light poles, traffic lights, and similar property suitable for hosting Small Wireless Facilities. As explained below, for two alternative and independent reasons, the Commission disagrees with state and local government commenters who assert that, in providing or denying access to government-owned structures, these governmental entities function solely as ''market participants'' whose rights cannot be subject to federal preemption under Section 253(a) or Section 332(c)(7).

36. First, this effort to differentiate between such governmental entities' ''regulatory'' and ''proprietary'' capacities in order to insulate the latter from preemption ignores a fundamental feature of the market participant doctrine. Specifically, Section 253(a) expressly preempts certain state and local ''legal requirements'' and makes no distinction between a state or locality's regulatory and proprietary conduct. Indeed, as the Commission has long recognized, Section 253(a)'s sweeping reference to ''state [and] local statute[s] [and] regulation[s]'' and ''other State [and] local legal requirement[s]'' demonstrates Congress's intent ''to capture a broad range of state and local actions that prohibit or have the effect of prohibiting entities from providing telecommunications services.'' Section 253(b) mentions ''requirement[s],'' a phrase that is even broader than that used in Section 253(a) but covers ''universal service,'' ''public safety and welfare,'' ''continued quality of telecommunications,'' and ''safeguard[s for the] rights of consumers.'' The subsection does not recognize a distinction between regulatory and proprietary. Section 253(c), which expressly insulates from preemption certain state and local government activities, refers in relevant part to ''manag[ing] the public rights-of-way'' and ''requir[ing] fair and reasonable compensation,'' while eliding any distinction between regulatory and proprietary action in either context. The Commission has previously observed that Section 253(c) ''makes explicit a local government's continuing authority to issue construction permits regulating how and when construction is conducted on roads and other public rights-of-way;'' the Commission concludes here that, as a general matter, ''manage[ment]'' of the ROW includes any conduct that bears on access to and use of those ROW, notwithstanding any attempts to characterize such conduct as proprietary. This reading, coupled with Section 253(c)'s narrow scope, suggests that Congress's omission of a blanket proprietary exception to preemption was intentional and thus that such conduct can be preempted under Section 253(a). The Commission therefore construes Section 253(c)'s requirements, including the requirement that compensation be ''fair and reasonable,'' as applying equally to charges imposed via contracts and other arrangements between a state or local government and a party engaged in wireless facility deployment. This interpretation is consistent with Section 253(a)'s reference to ''State or local legal requirement[s],'' which the Commission has consistently construed to include such agreements. In light of the foregoing, whatever the force of the market participant doctrine in other contexts, the Commission believes the language, legislative history, and purpose of Sections 253(a) and (c) are incompatible with the application of this doctrine in this context. The Commission observes once more that ''[o]ur conclusion that Congress intended this language to be interpreted broadly is reinforced by the scope of section 253(d),'' which ''directs the Commission to preempt any statute, regulation, or legal requirement *permitted* or imposed by a state or local government if it contravenes sections 253(a) or (b). A more restrictive interpretation of the term 'other legal requirements' easily could permit state and local restrictions on competition to escape preemption based solely on the way in which [State] action [is] structured. The Commission does not believe that Congress intended this result.''

37. Similarly, the Commission interprets Section 332(c)(7)(B)(ii)'s references to ''any request[s] for authorization to place, construct, or modify personal wireless service facilities'' broadly, consistent with Congressional intent. As described below, the Commission finds that ''any'' is unqualifiedly broad, and that ''request'' encompasses anything required to secure all authorizations necessary for the deployment of

personal wireless services infrastructure. In particular, the Commission finds that Section 332(c)(7) includes authorizations relating to access to a ROW, including but not limited to the ''place[ment], construct[ion], or modif[ication]'' of facilities on government-owned property, for the purpose of providing ''personal wireless service.'' The Commission observes that this result, too, is consistent with Commission precedent, which involved a contract that provided exclusive access to a ROW. As but one example, to have limited that holding to exclude government-owned property within the ROW even if the carrier needed access to that property would have the effect of diluting or completely defeating the purpose of Section 332(c)(7).

38. Second, and in the alternative, even if Section 253(a) and Section 332(c)(7) were to permit leeway for states and localities acting in their proprietary role, the examples in the record would be excepted because they involve states and localities fulfilling regulatory objectives. In the proprietary context, ''a State acts as a 'market participant with no interest in setting policy.' '' The Commission contrasts state and local governments' purely proprietary actions with states and localities acting with respect to managing or controlling access to property within public ROW, or to decisions about where facilities that will provide personal wireless service to the public may be sited. As several commenters point out, courts have recognized that states and localities ''hold the public streets and sidewalks in trust for the public'' and ''manage public ROW in their regulatory capacities.'' These decisions could be based on a number of regulatory objectives, such as aesthetics or public safety and welfare, some of which, as the Commission notes elsewhere, would fall within the preemption scheme envisioned by Congress. In these situations, the State or locality's role seems to be indistinguishable from its function and objectives as a regulator. To the extent that there is some distinction, the temptation to blend the two roles for purposes of insulating conduct from federal preemption cannot be underestimated in light of the overarching statutory objective that telecommunications service and personal wireless services be deployed without material impediments.

39. The Commission believes that Section 253(c) is properly construed to suggest that Congress did not intend to permit states and localities to rely on their ownership of property within a ROW as a pretext to advance regulatory objectives that prohibit or have the effect of prohibiting the provision of covered services, and thus that such conduct is preempted. The Commission's interpretations here are intended to facilitate the implementation of the scheme Congress intended and to provide greater regulatory certainty to states, municipalities, and regulated parties about what conduct is preempted under Section 253(a). Should factual questions arise about whether a state or locality is engaged in such behavior, Section 253(d) affords state and local governments and private parties an avenue for specific preemption challenges.

E. Responses to Challenges to the Commission's Interpretive Authority and Other Arguments

40. The Commission rejects claims that it lacks authority to issue authoritative interpretations of Sections 253 and 332(c)(7) in this Declaratory Ruling. The Commission acts here pursuant to its broad authority to interpret key provisions of the Communications Act, consistent with the Commission's exercise of that interpretive authority in the past. In this instance, the Commission finds that issuing a Declaratory Ruling is necessary to remove what the record reveals is substantial uncertainty and to reduce the number and complexity of legal controversies regarding certain fee and non-fee state and local legal requirements in connection with Small Wireless Facility infrastructure. The Commission thus exercise its authority in this Declaratory Ruling to interpret Section 253 and Section 332(c)(7) and explain how those provisions apply in the specific scenarios at issue here.

41. Nothing in Sections 253 or 332(c)(7) purports to limit the exercise of the Commission's general interpretive authority. Congress's inclusion of preemption provisions in Section 253(d) and Section 332(c)(7)(B)(v) does not limit the Commission's ability pursuant to other sections of the Act to construe and provide its authoritative interpretation as to the meaning of those provisions. Any preemption under Section 253 and/or Section 332(c)(7)(B) that subsequently occurs will proceed in accordance with the enforcement mechanisms available in each context. But whatever enforcement mechanisms may be available to preempt specific state and local requirements, nothing in Section 253 or Section 332(c)(7) prevents the Commission from declaring that a category of state or local laws is inconsistent with Section 253(a) or Section 332(c)(7)(B)(i)(II) because it prohibits or has the effect of prohibiting the relevant covered service.

42. The Commission's interpretations of Sections 253 and Section 332(c)(7) are likewise not at odds with the Tenth Amendment and constitutional precedent, as some commenters contend. In particular, the Commission's interpretations do not directly ''compel the states to administer federal regulatory programs or pass legislation.'' The outcome of violations of Section 253(a) or Section 332(c)(7)(B) of the Act are no more than a consequence of ''the limits Congress already imposed on State and local governments'' through its enactment of Section 332(c)(7).

43. The Commission also reject the suggestion that the limits Section 253 places on state and local rights-of-way fees and management will unconstitutionally interfere with the relationship between a state and its political subdivisions. As relevant to its interpretations here, it is not clear, at first blush, that such concerns would be implicated. Because state and local legal requirements can be written and structured in myriad ways, and challenges to such state or local activities could be framed in broad or narrow terms, the Commission declines to resolve such questions here, divorced from any specific context.

II. Third Report and Order

44. In this Third Report and Order, the Commission addresses the application of shot clocks to state and local review of wireless infrastructure deployments. The Commission does so by taking action in three main areas. First, the Commission adopts a new set of shot clocks tailored to support the deployment Small Wireless Facilities. Second, the Commission adopts a specific remedy that applies to violations of these new Small Wireless Facility shot clocks, which the Commission expects will operate to significantly reduce the need for litigation over missed shot clocks. Third, the Commission clarifies a number of issues that are relevant to all of the FCC's shot clocks, including the types of authorizations subject to these time periods.

A. New Shot Clocks for Small Wireless Facility Deployments

45. In 2009, the Commission concluded that it should use shot clocks to define a presumptive ''reasonable period of time'' beyond which state or local inaction on wireless infrastructure siting applications would constitute a ''failure to act'' within the meaning of

Section 332. The Commission adopted a 90-day clock for reviewing collocation applications and a 150-day clock for reviewing siting applications other than collocations. The record here suggests that the two existing Section 332 shot clocks have increased the efficiency of deploying wireless infrastructure. Many localities already process wireless siting applications in less time than required by those shot clocks and a number of states have enacted laws requiring that collocation applications be processed in 60 days or less. Some siting agencies acknowledge that they have worked to gain efficiencies in processing siting applications and welcome the addition of new shot clocks tailored to the deployment of small scale facilities. Given siting agencies' increased experience with existing shot clocks, the greater need for rapid siting of Small Wireless Facilities nationwide, and the lower burden siting of these facilities places on siting agencies in many cases, the Commission takes this opportunity to update its approach to speed the deployment of Small Wireless Facilities.

1. Two New Section 332 Shot Clocks for Deployment of Small Wireless Facilities

46. In this section, the Commission adopts two new Section 332 shot clocks for Small Wireless Facilities—60 days for review of an application for collocation of Small Wireless Facilities using a preexisting structure and 90 days for review of an application for attachment of Small Wireless Facilities using a new structure. These new Section 332 shot clocks carefully balance the well-established authority that states and local authorities have over review of wireless siting applications with the requirements of Section 332(c)(7)(ii) to exercise that authority ''within a reasonable period of time . . . taking into account the nature and scope of the request.'' Further, the Commission's decision is consistent with the BDAC's Model Code for Municipalities' recommended timeframes, which utilize this same 60-day and 90-day framework for collocation of Small Wireless Facilities and new structures and are similar to shot clocks enacted in state level small cell bills and the real world experience of many municipalities which further supports the reasonableness of its approach. The Commission's actions will modernize the framework for wireless facility siting by taking into consideration that states and localities should be able to address the siting of Small Wireless Facilities in a more expedited review period than needed for larger facilities.

47. The Commission finds compelling reasons to establish a new presumptively reasonable Section 332 shot clock of 60 days for collocations of Small Wireless Facilities on existing structures. The record demonstrates the need for, and reasonableness of, expediting the siting review of these collocations. Notwithstanding the implementation of the current shot clocks, more streamlined procedures are both reasonable and necessary to provide greater predictability for siting applications nationwide for the deployment of Small Wireless Facilities. The two current Section 332 shot clocks do not reflect the evolution of the application review process and evidence that localities can complete reviews more quickly than was the case when the existing Section 332 shot clocks were adopted nine years ago. Since 2009, localities have gained significant experience processing wireless siting applications. Indeed, many localities already process wireless siting applications in less than the required time and several jurisdictions require by law that collocation applications be processed in 60 days or less. With the passage of time, siting agencies have become more efficient in processing siting applications. These facts demonstrate that a shorter, 60-day shot clock for processing collocation applications for Small Wireless Facilities is reasonable.

48. As the Commission found in 2009, collocation applications are generally easier to process than new construction because the community impact is likely to be smaller. In particular, the addition of an antenna to an existing tower or other structure is unlikely to have a significant visual impact on the community. The size of Small Wireless Facilities poses little or no risk of adverse effects on the environment or historic preservation. Indeed, many jurisdictions do not require public hearings for approval of such attachments, underscoring their belief that such attachments do not implicate complex issues requiring a more searching review.

49. Further, the Commission finds no reason to believe that applying a 60-day time frame for Small Wireless Facility collocations under Section 332 creates confusion with collocations that fall within the scope of ''eligible facilities requests'' under Section 6409 of the Spectrum Act, which are also subject to a 60-day review. The type of facilities at issue here are distinctly different and the definition of a Small Wireless Facility is clear. Further, siting authorities are required to process Section 6409 applications involving the swap out of certain equipment in 60 days, and the Commission sees no meaningful difference in processing these applications than processing Section 332 collocation applications in 60 days. There is no reason to apply different time periods (60 vs. 90 days) to what is essentially the same review: Modification of an existing structure to accommodate new equipment. Finally, adopting a 60-day shot clock will encourage service providers to collocate rather than opting to build new siting structures which has numerous advantages.

50. For similar reasons, the Commission also finds it reasonable to establish a new 90-day Section 332 shot clock for new construction of Small Wireless Facilities. Ninety days is a presumptively reasonable period of time for localities to review such siting applications. Small Wireless Facilities have far less visual and other impact than the facilities the Commission considered in 2009 and should accordingly require less time to review. Indeed, some state and local governments have already adopted 60-day maximum reasonable periods of time for review of *all* small cell siting applications, and, even in the absence of such maximum requirements, several are already reviewing and approving small-cell siting applications within 60 days or less after filing. Numerous industry commenters advocated a 90-day shot clock for all non-collocation deployments. Based on this record, the Commission finds review of an application to deploy a Small Wireless Facility using a new structure warrants more review time than a mere collocation, but less than the construction of a macro tower. For the reasons explained below, the Commission also specifies today a provision that will initially reset these two new shot clocks in the event that a locality receives a materially incomplete application.

2. Batched Applications for Small Wireless Facilities

51. Given the way in which Small Wireless Facilities are likely to be deployed, in large numbers as part of a system meant to cover a particular area, the Commission anticipates that some applicants will submit ''batched'' applications: Multiple separate applications filed at the same time, each for one or more sites *or* a single application covering multiple sites. The Commission sought comment on whether batched applications should be subject to either longer or shorter shot clocks than would apply if each component of the batch were submitted

separately. The Commission sees no reason why the shot clocks for batched applications to deploy Small Wireless Facilities should be longer than those that apply to individual applications because, in many cases, the batching of such applications has advantages in terms of administrative efficiency that could actually make review easier. The Commission's decision flows from its current Section 332 shot clock policy. Under the two existing Section 332 shot clocks, if an applicant files multiple siting applications on the same day for the same type of facilities, each application is subject to the same number of review days by the siting agency. These multiple siting applications are equivalent to a batched application and therefore the shot clocks for batching should follow the same rules as if the applications were filed separately. Accordingly, when applications to deploy Small Wireless Facilities are filed in batches, the shot clock that applies to the batch is the same one that would apply had the applicant submitted individual applications. Should an applicant file a single application for a batch that includes both collocated and new construction of Small Wireless Facilities, the longer 90-day shot clock will apply, to ensure that the siting authority has adequate time to review the new construction sites.

52. The Commission recognizes the concerns raised by parties arguing for a longer time period for at least some batched applications but concludes that a separate rule is not necessary to address these concerns. Under the Commission's approach, in extraordinary cases, a siting authority, as discussed below, can rebut the presumption of reasonableness of the applicable shot clock period where a batch application causes legitimate overload on the siting authority's resources. Thus, contrary to some localities' arguments, the Commission's approach provides for a certain degree of flexibility to account for exceptional circumstances. In addition, consistent with, and for the same reasons as the Commission's conclusion below that Section 332 does not permit states and localities to prohibit applicants from requesting multiple types of approvals simultaneously, the Commission finds that Section 332(c)(7)(B)(ii) similarly does not allow states and localities to refuse to accept batches of applications to deploy Small Wireless Facilities.

B. New Remedy for Violations of the Small Wireless Facilities Shot Clocks

53. In adopting these new shot clocks for Small Wireless Facility applications, the Commission also provides an additional remedy that it expects will substantially reduce the likelihood that applicants will need to pursue additional and costly relief in court at the expiration of those time periods.

54. The Commission determines that the failure of a state or local government to issue a decision on a Small Wireless Facility siting application within the presumptively reasonable time periods above will constitute a ''failure to act'' within the meaning of Section 332(c)(7)(B)(v). Therefore, a provider is, at a minimum, entitled to the same process and remedies available for a failure to act within the new Small Wireless Facility shot clocks as they have been under the FCC's 2009 shot clocks. But the Commission also adds an additional remedy for the new Small Wireless Facility shot clocks.

55. State or local inaction by the end of the Small Wireless Facility shot clock will function not only as a Section 332(c)(7)(B)(v) failure to act but also amount to a presumptive prohibition on the provision of personal wireless services within the meaning of Section 332(c)(7)(B)(i)(II). Accordingly, the Commission would expect the state or local government to issue all necessary permits without further delay. In cases where such action is not taken, the Commission assumes, for the reasons discussed below, that the applicant would have a straightforward case for obtaining expedited relief in court.

56. As discussed in the Declaratory Ruling, a regulation under Section 332(c)(7)(B)(i)(II) constitutes an effective prohibition if it materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment. Missing shot clock deadlines would thus presumptively have the effect of unlawfully prohibiting service in that such failure to act can be expected to materially limit or inhibit the introduction of new services or the improvement of existing services. Thus, when a siting authority misses the applicable shot clock deadline, the applicant may commence suit in a court of competent jurisdiction alleging a violation of Section 332(c)(7)(B)(i)(II), in addition to a violation of Section 332(c)(7)(B)(ii), as discussed above. The siting authority then will have an opportunity to rebut the presumption of effective prohibition by demonstrating that the failure to act was reasonable under the circumstances and, therefore, did not materially limit or inhibit the applicant from introducing new services or improving existing services.

57. Given the seriousness of failure to act within a reasonable period of time, the Commission expects, as noted above, siting authorities to issue without any further delay all necessary authorizations when notified by the applicant that they have missed the shot clock deadline, absent extraordinary circumstances. Where the siting authority nevertheless fails to issue all necessary authorizations and litigation is commenced based on violations of Sections 332(c)(7)(B)(i)(II) and/or 332(c)(7)(B)(ii), the Commission expects that applicants and other aggrieved parties will likely pursue equitable judicial remedies. Given the relatively low burden on state and local authorities of simply acting—one way or the other—within the Small Wireless Facility shot clocks, the Commission thinks that applicants would have a relatively low hurdle to clear in establishing a right to expedited judicial relief.

58. The Commission expects that courts will typically find expedited and permanent injunctive relief warranted for violations of Sections 332(c)(7)(B)(i)(II) and 332(c)(7)(B)(ii) of the Act when addressing the circumstances discussed in this Order. The Commission believes that this approach is sensible because guarding against barriers to the deployment of personal wireless facilities not only advances the goal of Section 332(c)(7)(B) but also policies set out elsewhere in the Communications Act and 1996 Act, as the Commission recently has recognized in the case of Small Wireless Facilities. This is so whether or not these barriers stem from bad faith. Nor does the Commission anticipate that there would be unresolved issues implicating the siting authority's expertise and therefore requiring remand in most instances.

59. The guidance provided here should reduce the need for, and complexity of, case-by-case litigation and reduce the likelihood of vastly different timing across various jurisdictions for the same type of deployment. This clarification, along with the other actions the Commission takes in this Third Report and Order, should streamline the courts' decision-making process and reduce the possibility of inconsistent rulings. Consequently, the Commission believes that its approach helps facilitate courts' ability to ''hear and decide such [lawsuits] on an expedited basis,'' as the statute requires.

60. The Commission's updated interpretation of Section 332(c)(7) for Small Wireless Facilities effectively balances the interest of wireless service providers to have siting applications granted in a timely and streamlined manner and the interest of localities to

protect public safety and welfare and preserve their authority over the permitting process. The Commission's specialized deployment categories, in conjunction with the acknowledgement that in rare instances, it may legitimately take longer to act, recognize that the siting process is complex and handled in many different ways under various states' and localities' long-established codes. Further, the Commission's approach tempers localities' concerns about the inflexibility of a deemed granted proposal because the new remedy the Commission adopts here accounts for the breadth of potentially unforeseen circumstances that individual localities may face and the possibility that additional review time may be needed in truly exceptional circumstances. The Commission further finds that its interpretive framework will not be unduly burdensome on localities because a number of states have already adopted even more stringent deemed granted remedies

C. Clarification of Issues Related to All Section 332 Shot Clocks

1. Authorizations Subject to the ''Reasonable Period of Time'' Provision of Section 332(c)(7)(B)(ii)

61. Section 332(c)(7)(B)(ii) requires state and local governments to act ''within a reasonable period of time'' on ''any request for authorization to place, construct, or modify personal wireless service facilities.'' The Commission has not addressed the specific types of authorizations subject to this requirement. After carefully considering these arguments, the Commission finds that ''any request for authorization to place, construct, or modify personal wireless service facilities'' under Section 332(c)(7)(B)(ii) means all authorizations necessary for the deployment of personal wireless services infrastructure. This interpretation finds support in the record and is consistent with the courts' interpretation of this provision and the text and purpose of the Act.

62. The Commission's interpretation remains faithful to the purpose of Section 332(c)(7) to balance Congress's competing desires to preserve the traditional role of state and local governments in regulating land use and zoning, while encouraging the rapid development of new telecommunications technologies. Under the Commission's interpretation, states and localities retain their authority over personal wireless facilities deployment. At the same time, deployment will be kept on track by ensuring that the entire approval process necessary for deployment is completed within a reasonable period of time, as defined by the shot clocks addressed in this Third Report and Order.

2. Codification of Section 332 Shot Clocks

63. In addition to establishing two new Section 332 shot clocks for Small Wireless Facilities, the Commission takes this opportunity to codify its two existing Section 332 shot clocks for siting applications that do not involve Small Wireless Facilities. In 2009 the Commission found that 90 days is a reasonable time frame for processing collocation applications and 150 days is a reasonable time frame to process applications other than collocations. Since these Section 332 shot clocks were adopted as part of a declaratory ruling, they were not codified in the Commission's rules. The Commission sought comment on whether to modify these shot clocks. The Commission finds no need to modify them here and will continue to use these shot clocks for processing Section 332 siting applications that do not involve Small Wireless Facilities. The Commission does, though, codify these two existing shot clocks in its rules alongside the two newly-adopted shot clocks so that all interested parties can readily find the shot clock requirements in one place.

3. Collocations on Structures Not Previously Zoned for Wireless Use

64. The Commission takes this opportunity to clarify that for purposes of the Section 332 shot clocks, attachment of facilities to existing structures constitutes collocation, regardless of whether the structure or the location has previously been zoned for wireless facilities. As the Commission stated in 2009, ''an application is a request for collocation if it does not involve a 'substantial increase in the size of a tower' as defined in the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas.'' The definition of ''[c]ollocation'' in the NPA provides for the ''mounting or installation of an antenna on an existing tower, *building or structure* for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, *whether or not there is an existing antenna on the structure.*'' The NPA's definition of collocation explicitly encompasses collocations on structures and buildings that have not yet been zoned for wireless use. To interpret the NPA any other way would be unduly narrow and there is no persuasive reason to accept a narrower interpretation. This is particularly true given that the NPA definition of collocation stands in direct contrast with the definition of collocation in the Spectrum Act, pursuant to which facilities only fall within the scope of an ''eligible facilities request'' if they are attached to towers or base stations that have already been zoned for wireless use.

4. When Shot Clocks Start and Incomplete Applications

65. In 2014 the Commission clarified that a shot clock begins to run when an application is first submitted, not when the application is deemed complete. The clock can be paused, however, if the locality notifies the applicant within 30 days that the application is incomplete. The locality may pause the clock again if it provides written notice within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The Commission sought comment on these determinations.

66. Based on the record, the Commission finds no cause to alter the Commission's prior determinations and now codifies them in its rules. Codified rules, easily accessible to applicants and localities alike, should provide helpful clarity. The complaints by states and localities about the sufficiency of some of the applications they receive are adequately addressed by the Commission's current policy, which preserves the states' and localities' ability to pause review when they find an application to be incomplete. The Commission does not find it necessary at this point to shorten the 30-day initial review period for completeness because, as was the case when this review period was adopted in the 2009, it remains consistent with review periods for completeness under existing state wireless infrastructure deployment statutes and still ''gives State and local governments sufficient time for reviewing applications for completeness, while protecting applicants from a last minute decision that an application should be denied as incomplete.''

67. However, for applications to deploy Small Wireless Facilities, the Commission implements a modified tolling system designed to help ensure that providers are submitting complete applications on day one. This step accounts for the fact that the shot clocks applicable to such applications are shorter than those established in 2009 and, because of which, there may instances where the prevailing tolling

rules would further shorten the shot clocks to such an extent that it might be impossible for siting authorities to act on the application. For Small Wireless Facilities applications, the siting authority has 10 days from the submission of the application to determine whether the application is incomplete. The shot clock then resets once the applicant submits the supplemental information requested by the siting authority. Thus, for example, for an application to collocate Small Wireless Facilities, once the applicant submits the supplemental information in response to a siting authority's timely request, the shot clock resets, effectively giving the siting authority an additional 60 days to act on the Small Wireless Facilities collocation application. For subsequent determinations of incompleteness, the tolling rules that apply to non-Small Wireless Facilities would apply—that is, the shot clock would toll if the siting authority provides written notice within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information.

68. As noted above, multiple authorizations may be required before a deployment is allowed to move forward. For instance, a locality may require a zoning permit, a building permit, an electrical permit, a road closure permit, and an architectural or engineering permit for an applicant to place, construct, or modify its proposed personal wireless service facilities. All of these permits are subject to Section 332's requirement to act within a reasonable period of time, and thus all are subject to the shot clocks the Commission adopts or codifies here.

69. The Commission also finds that mandatory pre-application procedures and requirements do not toll the shot clocks. The Commission concludes that the ability to toll a shot clock when an application is found incomplete or by mutual agreement by the applicant and the siting authority should be adequate to address these concerns. Much like a requirement to file applications one after another, requiring pre-application review would allow for a complete circumvention of the shot clocks by significantly delaying their start date. An application is not ruled on within ''a reasonable period of time after the request is duly filed'' if the state or locality takes the full ordinary review period after having delayed the filing in the first instance due to required pre-application review. Indeed, requiring a pre-application review before an application may be filed is similar to imposing a moratorium, which the Commission has made clear does not stop the shot clocks from running. Therefore, the Commission concludes that if an applicant proffers an application, but a state or locality refuses to accept it until a pre-application review has been completed, the shot clock begins to run when the application is proffered.

70. That said, the Commission encourages *voluntary* pre-application discussions, which may well be useful to both parties. The record indicates that such meetings can clarify key aspects of the application review process, especially with respect to large submissions or applicants new to a particular locality's processes and may speed the pace of review. To the extent that an applicant voluntarily engages in a pre-application review to smooth the way for its filing, the shot clock will begin when an application is filed, presumably after the pre-application review has concluded.

71. The Commission also reiterates that the remedies granted under Section 332(c)(7)(B)(v) are independent of, and in addition to, any remedies that may be available under state or local law. Thus, where a state or locality has established its own shot clocks, an applicant may pursue any remedies granted under state or local law in cases where the siting authority fails to act within those shot clocks. However, the applicant must wait until the Commission shot clock period has expired to bring suit for a ''failure to act'' under Section 332(c)(7)(B)(v).

III. Procedural Matters

A. Final Regulatory Flexibility Analysis

72. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM), released in April 2017 (82 FR 22453, May 16, 2017). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The comments received are addressed below in Section 2. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for and Objectives of the Rules

73. In the Third Report and Order, the Commission continues its efforts to promote the timely buildout of wireless infrastructure across the country by eliminating regulatory impediments that unnecessarily delay bringing personal wireless services to consumers. The record shows that lengthy delays in approving siting applications by siting agencies has been a persistent problem. With this in mind, the Third Report and Order establishes and codifies specific rules concerning the amount of time siting agencies may take to review and approve certain categories of wireless infrastructure siting applications. More specifically, the Commission addresses its Section 332 shot clock rules for infrastructure applications which will be presumed reasonable under the Communications Act. As an initial matter, the Commission establishes two new shot clocks for Small Wireless Facilities applications. For collocation of Small Wireless Facilities on preexisting structures, the Commission adopts a 60-day shot clock which applies to both individual and batched applications. For applications associated with Small Wireless Facilities new construction the Commission adopts a 90-day shot clock for both individual and batched applications. The Commission also codifies two existing Section 332 shot clocks for all other Non-Small Wireless Facilities that were established in 2009 without codification. These existing shot clocks require 90-days for processing of all other Non-Small Wireless Facilities collocation applications, and 150-days for processing of all other Non-Small Wireless Facilities applications other than collocations.

74. The Third Report and Order addresses other issues related to both the existing and new shot clocks. In particular the Commission addresses the specific types of authorizations subject to the ''Reasonable Period of Time'' provisions of Section 332(c)(7)(B)(ii), finding that ''any request for authorization to place, construct, or modify personal wireless service facilities'' under Section 332(c)(7)(B)(ii) means all authorizations a locality may require, and to all aspects of and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment of personal wireless services infrastructure. The Commission also addresses collocation on structures not previously zoned for wireless use, when the four Section 332 shot clocks begin to run, the impact of incomplete applications on the Commission's Section 332 shot clocks, and how state imposed shot clocks remedies effect the Commission's Section 332 shot clocks remedies.

75. The Commission discusses the appropriate judicial remedy that applicants may pursue in cases where a

siting authority fails to act within the applicable shot clock period. In those situations, applicants may commence an action in a court of competent jurisdiction alleging a violation of Section 332(c)(7)(B)(i)(II) and seek injunctive relief granting the application. Notwithstanding the availability of a judicial remedy if a shot clock deadline is missed, the Commission recognizes that the Section 332 time frames might not be met in exceptional circumstances and has refined its interpretation of the circumstances when a period of time longer than the relevant shot clock would nonetheless be a reasonable period of time for action by a siting agency. In addition, a siting authority that is subject to a court action for missing an applicable shot clock deadline has the opportunity to demonstrate that the failure to act was reasonable under the circumstances and, therefore, did not materially limit or inhibit the applicant from introducing new services or improving existing services thereby rebutting the effective prohibition presumption.

76. The rules adopted in the Third Report and Order will accelerate the deployment of wireless infrastructure needed for the mobile wireless services of the future, while preserving the fundamental role of localities in this process. Under the Commission's new rules, localities will maintain control over the placement, construction and modification of personal wireless facilities, while at the same time the Commission's new process will streamline the review of wireless siting applications.

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

77. Only one party—the Smart Cities and Special Districts Coalition—filed comments specifically addressing the rules and policies proposed in the IRFA. They argue that any shortening or alteration of the Commission's existing shot clocks or the adoption of a deemed granted remedy will adversely affect small local governments, special districts, property owners, small developers, and others by placing their siting applications behind wireless provider siting applications. Subsequently, NATOA filed comments concerning the draft FRFA. NATOA argues that the new shot clocks impose burdens on local governments and particularly those with limited resources. NATOA asserts that the new shot clocks will spur more deployment applications than localities currently process.

78. These arguments, however, fail to acknowledge that Section 332 shot clocks have been in place for years and reflect Congressional intent as seen in the statutory language of Section 332. The record in this proceeding demonstrates the need for, and reasonableness of, expediting the siting review of certain facility deployments. More streamlined procedures are both reasonable and necessary to provide greater predictability. The current shot clocks do not reflect the evolution of the application review process and evidence that localities can complete reviews more quickly than was the case when the original shot clocks were adopted nine years ago. Localities have gained significant experience processing wireless siting applications and several jurisdictions already have in place laws that require applications to be processed in less time than the Commission's new shot clocks. With the passage of time, sitting agencies have become more efficient in processing siting applications and this, in turn, should reduce any economic burden the Commission's new shot clock provisions have on them.

79. The Commission has carefully considered the impact of its new shot clocks on siting authorities and has established shot clocks that take into consideration the nature and scope of siting requests by establishing shot clocks of different lengths of time that depend on the nature of the siting request at issue. The length of these shot clocks is based in part on the need to ensure that local governments have ample time to take any steps needed to protect public safety and welfare and to process other pending utility applications. Since local siting authorities have gained experience in processing siting requests in an expedited fashion, they should be able to comply with the Commission's new shot clocks.

80. The Commission has taken into consideration the concerns of the Smart Cities and Special Districts Coalition and NATOA. It has established shot clocks that will not favor wireless providers over other applicants with pending siting applications. Further, instead of adopting a deemed granted remedy that would grant a siting application when a shot clock lapses without a decision on the merits, the Commission provides guidance as to the appropriate judicial remedy that applicants may pursue and examples of exceptional circumstance where a siting authority may be justified in needing additional time to review a siting application then the applicable shot clock allows. Under this approach, the applicant may seek injunctive relief as long as several minimum requirements are met. The siting authority, however, can rebut the presumptive reasonableness of the applicable shot clock under certain circumstances. The circumstances under which a sitting authority might have to do this will be rare. Under this carefully crafted approach, the interests of siting applicants, siting authorities, and citizens are protected.

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

81. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

82. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

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

84. *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 describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the 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 percent of all businesses in the United States

which translates to 28.8 million businesses.

85. 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 August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

86. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

87. *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 1,000 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.

88. The Commission's own data—available in its Universal Licensing System—indicate that, as of May 17, 2018, there are 264 Cellular licensees that will be affected by the Commission's actions. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to 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.

89. *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 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. The Commission notes however that many of the licensees in this category are individuals and not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities that may be affected by the Commission's actions in this proceeding.

90. *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. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, 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.

91. *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 closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA

rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of PLMR Licensees are small entities.

92. According to the Commission's records, a total of approximately 400,622 licenses comprise PLMR users. Of this number 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 the Third Report and Order. 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.

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

94. 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.

95. With respect to the second category, Internal Private Spectrum use consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The closest applicable definition of a small entity is the ''Wireless Telecommunications Carriers (except Satellite)'' definition under the SBA rules. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this category, U.S. Census 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 1,000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of firms that may be affected by the Commission's action can be considered small.

96. *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)).

97. *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 there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard). After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

98. 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.

99. *EBS*—The Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using

wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census Bureau data, the Commission's Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

100. *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.

101. *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 estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

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

103. 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 estimates, 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, 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. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

104. *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 show 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.

105. According to Commission staff review of the BIA/Kelsey, LLC's Publications, Inc. Media Access Pro Radio Database (BIA) as of January 2018, about 11,261 (or about 99.92 percent) of 11,270 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial AM radio stations to be 4,633 stations and the number of commercial FM radio stations to be 6,738, for a total number of 11,371. The Commission notes, that the Commission has also estimated the number of licensed NCE radio stations to be 4,128. 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.

106. 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. Also, as noted above, an additional element of the definition of ''small business'' is that

the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

107. *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 Bureau data for 2012 indicate that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard, the Commission concludes that the majority of FM Translator Stations and Low Power FM Stations are small.

108. *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.

109. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $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.

110. *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 and 42 firms had annual receipts of $25 million to $49,999,999. Thus, a majority of ''All Other Telecommunications'' firms potentially affected by the Commission's action can be considered small.

111. *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. At present, there are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services. The Commission has not yet defined a small business size standard for microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. 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 a majority of fixed microwave service licensees can be considered small.

112. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission also notes that it does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. The Commission estimates however, that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

113. *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.

114. As of March 1, 2017, the ASR database includes approximately 122,157 registration records reflecting a ''Constructed'' status and 13,987 registration records reflecting a ''Granted, Not Constructed'' status. These figures include both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require ASR registration, we do not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners that would be subject to the rules on which 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. In addition, there may be other non-licensee owners of other wireless infrastructure, including Distributed Antenna Systems (DAS) and small cells that might be affected by the measures on which the Commission seeks comment. The Commission does not have any basis for estimating the number of such non-licensee owners that are small entities.

115. The closest applicable SBA category is All Other Telecommunications, and the appropriate size standard 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 and 15 firms had annual receipts of $25 million to $49,999,999. Thus, under this SBA size standard a majority of the firms potentially affected by the Commission's action can be considered small.

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

116. The Third Report and Order does not establish any reporting, recordkeeping, or other compliance requirements for companies involved in wireless infrastructure deployment. In addition to not adopting any reporting, recordkeeping or other compliance requirements, the Commission takes significant steps to reduce regulatory impediments to infrastructure deployment and, therefore, to spur the growth of personal wireless services. Under the Commission's approach, small entities as well as large companies will be assured that their deployment requests will be acted upon within a reasonable period of time and, if their applications are not addressed within the established time frames, applicants may seek injunctive relief granting their siting applications. The Commission, therefore, has taken concrete steps to relieve companies of all sizes of uncertainly and has eliminated unnecessary delays.

117. The Third Report and Order also does not impose any reporting or recordkeeping requirements on state and local governments. While some commenters argue that additional shot clock classifications would make the siting process needlessly complex without any proven benefits, the Commission concludes that any additional administrative burden from increasing the number of Section 332 shot clocks from two to four is outweighed by the likely significant benefit of regulatory certainty and the resulting streamlined deployment process. The Commission's actions are consistent with the statutory language of Section 332 and therefore reflect Congressional intent. Further, siting agencies have become more efficient in processing siting applications and will be able to take advantage of these efficiencies in meeting the new shot clocks. As a result, the additional shot clocks that the Commission adopts will foster the deployment of the latest wireless technology and serve consumer interests.

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

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

119. The steps taken by the Commission in the Third Report and Order eliminate regulatory burdens for small entities as well as large companies that are involved with the deployment of person wireless services infrastructure. By establishing shot clocks and guidance on injunctive relief for personal wireless services infrastructure deployments, the Commission has standardized and streamlined the permitting process. These changes will significantly minimize the economic burden of the siting process on all entities, including small entities, involved in deploying personal wireless services infrastructure. The record shows that permitting delays imposes significant economic and financial burdens on companies with pending wireless infrastructure permits. Eliminating permitting delays will remove the associated cost burdens and enabling significant public interest benefits by speeding up the deployment of personal wireless services and infrastructure. In addition, siting agencies will be able to utilize the efficiencies that they have gained over the years processing siting applications to minimize financial impacts.

120. The Commission considered but did not adopt proposals by commenters to issue ''Best Practices'' or ''Recommended Practices,'' and to develop an informal dispute resolution process and mediation program, noting that the steps taken in the Third Report and Order address the concerns underlying these proposals to facilitate cooperation between parties to reach mutually agreed upon solutions. The Commission anticipates that the changes it has made to the permitting process will provide significant efficiencies in the deployment of personal wireless services facilities and this in turn will benefit all companies, but particularly small entities, that may not have the resources and economies of scale of larger entities to navigate the permitting process. By adopting these changes, the Commission will continue to fulfill its statutory responsibilities, while reducing the burden on small entities by removing unnecessary impediments to the rapid deployment of personal wireless services facilities and infrastructure across the country.

7. Report to Congress

121. The Commission will send a copy of the Third Report and Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the

Commission will send a copy of the Third Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Third Report and Order and FRFA (or summaries thereof) also will be published in the **Federal Register**.

B. Paperwork Reduction Act

122. This Third Report and Order does not contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

C. Congressional Review Act

123. The Commission will send a copy of this Declaratory Ruling and Third Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

124. Accordingly, *it is ordered*, pursuant to sections 1, 4(i)–(j), 7, 201, 253, 301, 303, 309, 319, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 157, 201, 253, 301, 303, 309, 319, 332, that this Declaratory Ruling and Third Report and Order in WT Docket No. 17–79 *is* hereby *adopted*.

125. *It is further ordered* that part 1 of the Commission's rules is *amended* as set forth in the final rules of this Declaratory Ruling and Third Report and Order, and that these changes *shall be effective* January 14, 2019.

126. *It is further ordered* that this Third Report and Order *shall be* effective January 14, 2019. The Declaratory Ruling and the obligations set forth therein *are effective* on the same day that this Third Report and Order becomes effective. It is our intention in adopting the foregoing Declaratory Ruling and these rule changes that, if any provision of the Declaratory Ruling or the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of such Declaratory Ruling and the rules not deemed unlawful, and the application of such Declaratory Ruling and the rules to other person or circumstances, shall remain in effect to the fullest extent permitted by law.

127. *It is further ordered* that, pursuant to 47 CFR 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of this Declaratory Ruling and Third Report and Order will commence on the date that a summary of this Declaratory Ruling and Third Report and Order is published in the **Federal Register**.

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

129. *It is further ordered* that this Declaratory Ruling and Third Report and Order *shall be* sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Communications common carriers, Communications equipment, Environmental protection, Historic preservation, Radio, Telecommunications.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

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

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; Sec. 102(c), Div. P, Public Law 115–141, 132 Stat. 1084; 28 U.S.C. 2461, unless otherwise noted.

■ 2. Add subpart U, consisting of §§ 1.6001 through 1.6003, to read as follows:

Subpart U—State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities

Sec.

§ 1.6001 Purpose.

This subpart implements 47 U.S.C. 332(c)(7) and 1455.

§ 1.6002 Definitions.

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in this part and the Communications Act of 1934, 47 U.S.C. 151 *et seq*. Terms used in this subpart have the following meanings:

(a) *Action* or *to act* on a siting application means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

(b) *Antenna,* consistent with § 1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this chapter.

(c) *Antenna equipment,* consistent with § 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

(d) *Antenna facility* means an antenna and associated antenna equipment.

(e) *Applicant* means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

(f) *Authorization* means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.

(g) *Collocation,* consistent with § 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B of this part, section I.B, means—

(1) Mounting or installing an antenna facility on a pre-existing structure; and/or

(2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

(3) The definition of ''collocation'' in § 1.6100(b)(2) applies to the term as used in that section.

(h) *Deployment* means placement, construction, or modification of a personal wireless service facility.

(i) *Facility* or *personal wireless service facility* means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

(j) *Siting application* or *application* means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.

(k) *Siting authority* means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.

(l) *Small wireless facilities,* consistent with § 1.1312(e)(2), are facilities that meet each of the following conditions:

(1) The facilities—

(i) Are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d); or

(ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or

(iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of ''antenna'' in § 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

(m) *Structure* means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

§ 1.6003 Reasonable periods of time to act on siting applications.

(a) *Timely action required.* A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(b) *Shot clock period.* The shot clock period for a siting application is the sum of—

(1) The number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section; plus

(2) The number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(c) *Presumptively reasonable periods of time*—(1) *Review periods for individual applications.* The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth in paragraphs (c)(1)(i) through (iv) of this section:

(i) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.

(ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

(iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.

(iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) *Batching.* (i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or (iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.

(ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) of this section and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.

(iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (ii) of this section.

(d) *Tolling period.* Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth in paragraphs (d)(1) through (3) of this section.

(1) For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

(2) For all other initial applications, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(2)(i) of this section is effectuated on or before the 30th day after the date when the application was submitted; or

(3) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or (2) of this section; until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(iii) But only if the notice pursuant to paragraph (d)(3)(i) of this section is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or (2) of this section.

(e) *Shot clock date.* The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; *provided,* that if the date calculated in this manner is a ''holiday'' as defined in § 1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The term ''business day'' means any day as defined in § 1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

§ 1.40001 [Redesignated as § 1.6100 and Amended]

■ 3. Redesignate § 1.40001 as § 1.6100 and, in newly redesignated § 1.6100, remove and reserve paragraph (a).

Subpart CC—[Removed]

■ 4. Remove subpart CC.

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