

We now announce the addition of a third session consisting of one committee meeting to take place December 13, 2013. The meeting will run from 9:00 a.m. to 5:00 p.m. The schedule for the third session follows.

**Schedule for Negotiations:** The committee will meet for its third and final session on December 13, 2013. The meeting will run from 9:00 a.m. to 5:00 p.m.

The meeting will be held at the U.S. Department of Education at: 1990 K Street NW., Eighth Floor Conference Center, Washington, DC 20006.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Program Authority:** 20 U.S.C. 1098a.

Dated: December 2, 2013.

**Brenda Dann-Messier,**

*Acting Assistant Secretary for the Office of Postsecondary Education.*

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

[FWS-R7-SM-2013-N259;  
FXFR13350700640-145-FF07J00000]

### Subsistence Management Program for Public Lands in Alaska; Western Interior Alaska Federal Subsistence Regional Advisory Council Meeting

**AGENCY:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting (teleconference).

**SUMMARY:** This document informs the public that the Western Interior Alaska Federal Subsistence Regional Advisory Council (Council) will hold a public meeting by teleconference on December 11, 2013. The public is invited to participate and to provide oral testimony. The purpose of the Council is to provide recommendations and information to the Federal Subsistence Board, to review policies and management plans, and to provide a public forum for subsistence issues.

**DATES:** The teleconference will take place on December 11, 2013, at 8:30 a.m. (AKST). For information on how to participate, please see **SUPPLEMENTARY INFORMATION**, below.

**FOR FURTHER INFORMATION CONTACT:** Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Gene Peltola, Office of Subsistence Management; (907) 786-3888; or [subsistence@fws.gov](mailto:subsistence@fws.gov). For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743-9461; or [skessler@fs.fed.us](mailto:skessler@fs.fed.us).

**SUPPLEMENTARY INFORMATION:** Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3111-3126) sets forth the provisions of the Federal Subsistence Management Program. This program provides a priority for taking of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Federal Subsistence Board, which includes public and private members, administers the program supported by Federal Subsistence Regional Advisory Councils, which represent 10 subsistence resource regions in Alaska. The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Board will engage in outreach efforts for this notice to Tribes and Alaska Native corporations to ensure they are advised of the mechanisms by which they can participate.

In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., the Western Interior Alaska Federal Subsistence Regional Advisory Council will meet to review State and Federal wildlife proposals and fisheries resource monitoring plans and to form other recommendations on fish and wildlife issues. This meeting is a

follow-up to the Council's November 6-8, 2013, meeting, which did not achieve a required quorum, to make recommendations on changes to the regulations for the subsistence taking of wildlife to the Federal Subsistence Board and to address subsistence issues concerning the region. To participate, call toll free 1-877-638-8165. When prompted, enter the following passcode: 9060609.

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101-3126; 18 U.S.C. 3551-3586; 43 U.S.C. 1733.

Dated: November 22, 2013.

**Gene Peltola,**

*Assistant Regional Director, U.S. Fish and Wildlife Service, Acting Chair, Federal Subsistence Board.*

Dated: November 25, 2013.

**Steve Kessler,**

*Subsistence Program Leader, USDA-Forest Service.*

[FR Doc. 2013-29152 Filed 12-4-13; 8:45 am]

**BILLING CODE 3410-11-4310-55-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 17

[WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59; FCC 13-122]

### Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on potential measures to expedite the environmental and historic preservation review of new wireless facilities and on rules to implement statutory provisions governing State and local review of wireless siting proposals. By this action, the Commission seeks to promote the deployment of infrastructure that is necessary to provide the public with advanced wireless broadband services, consistent with governing law and the public interest.

**DATES:** Submit comments on or before February 3, 2014. Submit reply comments on or before March 5, 2014.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 13-238; WC Docket No. 11-59; WT Docket No. 13-32, by the following methods:

■ *Federal Communications Commission's Web site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

■ *People with Disabilities*: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, Cart, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments, including instructions for submitting comments by mail, and additional information on the rulemaking process, see the Supplementary Information section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Peter Trachtenberg, at (202) 418-7369, or by email at [Peter.Trachtenberg@fcc.gov](mailto:Peter.Trachtenberg@fcc.gov), or Mania Baghdadi, at (202) 418-2133, or by email at [Mania.Baghdadi@fcc.gov](mailto:Mania.Baghdadi@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 13-122, adopted and released on September 26, 2013. The full text of the NPRM is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554; the contractor's Web site, <http://www.bcpweb.com>; or by calling (800) 378-3160, facsimile (202) 488-5563, or email [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com). Copies of the NPRM also may be obtained via the Commission's Electronic Comment Filing System (ECFS) at <http://fjallfoss.fcc.gov/ecfs2/>, using the "Search for Filings" function and entering the proceeding number 13-238.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

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

*Availability of Documents.*

Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC, 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

*Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

**I. Introduction and Executive Summary**

1. In this Notice of Proposed Rulemaking (NPRM), the Commission explores opportunities to promote the deployment of infrastructure that is necessary to provide the public with advanced wireless broadband services, consistent with governing law and the public interest. In the

Telecommunications Act of 1996, Congress directed the Commission to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans by working to remove barriers to infrastructure investment in a manner consistent with the public interest, convenience, and necessity. The Commission has made significant progress in recent years in expanding high-speed Internet access and promoting broadband availability, but the Commission must continue to examine and address impediments to broadband investment, including impediments that may be presented by unnecessary or unclear regulatory requirements and processes. This NPRM addresses potential measures to expedite the environmental and historic preservation review of new wireless facilities, as well as rules to implement statutory provisions governing State and local review of wireless siting proposals.

2. In the last few years, the Commission has taken a number of significant steps to reduce barriers to wireless infrastructure investment. In 2009, the Commission released a Declaratory Ruling establishing presumptive timeframes for State and local processing of wireless tower and antenna siting requests (2009 *Declaratory Ruling*, 74 FR 67871, December 21, 2009). In 2011, the Commission released a Notice of Inquiry on Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting (*NOI*). In the *NOI*, the Commission sought to develop a record on the nature and scope of both wireline and wireless broadband deployment issues, including best practices that have promoted deployment as well as practices that have resulted in delays, and further sought comment on specific steps that could be taken to identify and reduce unnecessary obstacles to obtaining access to rights-of-way and siting wireless facilities.

3. With this NPRM, the Commission now addresses four major issues regarding the regulation of wireless facility siting and construction, including issues raised by commenters in the *NOI* proceeding, with the goal of reducing, where appropriate, the cost and delay associated with the deployment of such infrastructure. First, the Commission seeks comment on expediting its environmental review process, including review for effects on historic properties, in connection with proposed deployments of small cells, Distributed Antenna Systems (DAS), and other small-scale wireless

technologies that may have minimal effects on the environment. While cellular service has traditionally been provided by antennas on large communications towers, these newer technologies can be deployed on utility poles, street lamps, water towers, or rooftops. Through these deployments, providers can enhance the wireless capacity available to mobile users for advanced broadband applications or fill in coverage gaps in areas where it is not possible or economically justifiable to put in additional large towers. They can also deploy these cells inside buildings to enhance indoor signal strength.

4. Deployment of such technologies is therefore becoming increasingly common as one measure to meet growing consumer demand, and the Commission finds it may be appropriate to update its environmental review requirements to reflect this development. These requirements are intended to ensure that the Commission considers the environmental effects of new wireless infrastructure deployments, including effects on historic properties. While the Commission has acted in the past to tailor its environmental review for the deployment of wireless infrastructure, those processes were largely developed long before small cell technologies became prevalent, and for the most part reflect the scale and level of environmental concern presented by traditional deployments on tall structures. Accordingly, the Commission seeks comment on whether to expedite or tailor its environmental review process for technologies such as DAS and small cells.

5. Second, in response to a petition filed by CTIA—The Wireless Association (CTIA) filed on December 21, 2012 (“Temporary Towers Petition”), and based on the associated record, the Commission proposes to adopt a narrow exemption from the Commission’s pre-construction environmental notification requirements for certain temporary towers. Under the current notification requirements, before a party can register with the Commission a proposed communications tower that requires registration under part 17 of its rules, and thus begin to construct or deploy the tower in question, it must complete a process of local and national notice, which helps to facilitate public involvement in the Commission’s consideration of the proposed deployment’s potential to create significant environmental effects. Temporary towers are often needed with very little advance warning, however, making the notification process

impracticable. Under the proposed exemption, eligible towers must meet specified criteria, including very short duration, height limits, minimal or no associated excavation, and absence of lighting, which should ensure a minimal potential for significant environmental effects. The Commission therefore tentatively finds that the proposed exemption will serve the public interest by enabling providers to deploy these temporary facilities on a timely basis in response to unanticipated short term needs without undermining the purposes of the notification process.

6. Third, the Commission seeks comment on rules to clarify and implement the requirements of section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). Under section 6409(a), a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. Eligible facilities requests include collocation requests, as well as requests for removal or replacement of existing equipment. Collocation, which involves placing wireless equipment on pre-existing structures rather than constructing new support structures, is often the most efficient, rapid, and economical means of expanding wireless coverage and capacity, and also reduces the environmental and other impacts of new wireless facilities deployment. By requiring timely approval of eligible collocations, section 6409(a) will help providers meet the nation’s growing demand for wireless broadband service and may be critical to the deployment of the nationwide public safety broadband network mandated by the Spectrum Act. Because most of the terms of the provision are undefined, however, the Commission is concerned that disputes over its interpretation may significantly delay these benefits. The Commission therefore proposes to adopt rules clarifying the provision’s meaning to assist all parties in implementing its requirements. The Commission also seeks comment on how to encourage efforts to develop best practices for applying section 6409(a) and what role they might play in interpreting or implementing the provision.

7. Finally, the Commission seeks comment on whether it should address certain disputes or questions that have arisen about how to apply its *2009 Declaratory Ruling* in four specific circumstances. The Commission also seeks comment on one additional issue

of interpretation arising under section 332(c)(7)(B)(i)(I), a provision of section 332(c)(7) that was not addressed by the *2009 Declaratory Ruling*. The Commission notes that the presumptive timeframes the Commission established under section 332(c)(7) in the *2009 Declaratory Ruling* govern many wireless facilities siting applications that are not covered by section 6409(a).

## II. Expediting Environmental Compliance for Distributed Antenna Systems and Small Cells

8. Many wireless technologies now connect to mobile users using small antennas that are placed on short structures such as poles or inside buildings and that, individually, provide coverage over a much smaller area than a traditional cell. The Commission’s environmental rules were largely written prior to these developments, however, and primarily reflect the environmental concerns presented by traditional macrocell deployments on tall structures. Further, because Distributed Antenna Systems (DAS) and small cell deployments often require a large number of antennas or base stations to provide coverage to an area comparable to a single macrocell, they may implicate dramatically greater environmental compliance costs under the existing site-by-site review process. Given these factors, and the increasing reliance on these new technologies to meet ever increasing demand for wireless services, including broadband, the Commission finds that it should consider whether further tailoring of its environmental rules is appropriate for technologies such as DAS and small cells, and, if so, how such tailoring can be accomplished.

### A. NEPA Review

9. The Commission first addresses whether and how it should expedite its National Environmental Policy Act of 1969 (NEPA) compliance process for DAS and small cells, and in particular whether to adopt a categorical exclusion to relieve all or some subset of such deployments from routine NEPA review. The Commission addresses a possible exclusion for historic preservation review under section 106 of the National Historic Preservation Act of 1966 (NHPA) separately below.

10. *Updating the NEPA Exclusion for Collocations in Note 1 to § 1.1306.* The Commission first seeks comment on whether to adopt Verizon’s proposal that the Commission amend the first sentence in Note 1 to § 1.1306 of the Commission’s rules, which currently excludes collocations on an existing building or antenna tower from

environmental review except for review for RF emissions exposure and effects on historic properties. Verizon proposes that the exclusion should also apply to collocations on other structures, including structures such as utility poles, water tanks, light poles, and road signs. For the reasons discussed below, the Commission proposes a rule change to implement this suggestion and seeks comment.

11. As noted above, the exclusion under the first part of Note 1 to § 1.1306 already applies to the mounting of antennas on existing towers and buildings, reflecting a determination that such collocations individually and cumulatively are unlikely to have significant environmental effects. The Commission tentatively concludes that the same determination applies with regard to collocations on structures like water towers and poles. In addition, the Commission has previously recognized that the ability to use structures such as utility poles is vitally important to the deployment of wireless and wireline services, including broadband. In particular, DAS and small cell facilities, which are critical to satisfying demand for ubiquitous mobile voice and broadband services, often use such structures. Accordingly, to expedite environmental processing for DAS and small cell deployments and to update its environmental rules to reflect current industry practices and technologies, the Commission proposes to amend Note 1 to § 1.1306 to provide that the categorical exclusion in the first sentence also applies to antennas mounted on existing structures other than buildings and antenna towers, including structures on which equipment associated with emerging technologies such as DAS facilities is sited. To accomplish such a change, the Commission proposes to modify sentence 1 of the note to change the phrase “existing building or antenna tower” to “existing building, antenna tower, or other structure.”

12. The Commission seeks comment on this proposal and on whether the proposed language requires any further definition or qualification. For example, the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (Collocation Agreement) and the Nationwide Programmatic Agreement Regarding the section 106 National Historic Preservation Act Review Process (NPA) do not distinguish between buildings and other non-tower structures in applying exclusions from section 106 review. The Commission believes this supports its tentative view that there is no basis to subject collocations on

structures such as utility poles to greater environmental review than collocations on buildings. The Commission seeks comment on this analysis. Are collocations on structures other than towers and buildings any more likely to have significant environmental effects than collocations on towers and buildings? Are there certain types of existing structures for which this is true and, if so, which types, and what effects? The Commission further seeks comment on whether, and how, the Commission should define, specify, or limit what constitutes a structure in any rule that the Commission adopts. Are there any technical or other limitations that the Commission should reference in a definition of the term structure such that Note 1 to § 1.1306 would not extend to types of existing structures, if any, for which collocations are likely to have significant environmental effects? Those that advocate a different level of environmental review for collocations on any types of existing structures, or that advocate any other limitations on an expanded exclusion, should identify those attributes of such structures that they believe warrant heightened scrutiny and describe with specificity any limitations they consider appropriate.

13. The Commission seeks comment on whether any further action is needed to adequately and appropriately tailor NEPA review for collocations of DAS and small cell facilities or other collocations. For example, the first sentence of Note 1 to § 1.1306 specifically excludes the mounting of antennas on existing structures from NEPA review. The Commission's understanding, however, is that the typical deployment of a DAS or small cell node on a pole or other structure includes not only antennas but also associated equipment such as power supplies, converters, and transceivers. Should the Commission further amend the categorical exclusion for collocations so that it expressly covers not only the mounting of antennas but also the associated equipment? Does such associated equipment raise particular environmental concerns that the antennas do not? Does the Commission need to clarify or define what constitutes associated equipment for purposes of this exclusion? If so, how should associated equipment be defined? Are there physical, technical, or other technologically neutral characteristics of associated equipment by which the Commission should limit the exclusion so that there will be no significant environmental effects?

14. The Commission also seeks comment on whether it should further

amend the first sentence of Note 1 to § 1.1306 to clarify that the collocation exclusion applies to installations in the interior of buildings. Similarly, is any amendment needed to clarify that the first part of the Note 1 to § 1.1306 exclusion applies not only to rooftops but also to the sides of buildings? Given that either such clarification would not exclude facilities from section 106 review or review for exposure to RF emissions, are there any other special environmental concerns that might arise from collocations inside or on the side of buildings as opposed to collocations on rooftops? If either of these clarifications to the collocation exclusion in Note 1 to § 1.1306 is appropriate, how should the language be amended to reflect the clarification?

15. The Commission notes that while the proposed amendment to Note 1 to § 1.1306 would continue to exclude only facilities that are collocated on existing structures, the Commission is also seeking comment below on whether to adopt a new categorical exclusion that would broadly exclude DAS and small cell deployments, either collocated or deployed on new poles, from its routine NEPA review procedures (other than for compliance with RF exposure limits). The Commission proposes the above amendment to the Note 1 to § 1.1306 collocation exclusion independent of whether the Commission also adopts a separate categorical exclusion applicable to smaller facilities generally. Regardless of whether the Commission also adopts a broader NEPA exclusion for small facilities generally, it anticipates that the proposed expansion of the Note 1 to § 1.1306 collocation exclusion to cover all structures will continue to provide independent benefits, because it will apply to all collocations on any non-tower structure, not merely collocations involving DAS and small cell facilities. For example, such a clarification would also cover collocation of a macrocell on a water tank.

16. *Adopting A New Categorical Exclusion for DAS/Small Cell Deployments.* The Commission's existing categorical exclusions are designed to capture and exclude from environmental processing those categories of facilities that are unlikely to have significant environmental effects. Such exclusions facilitate rapid deployment of services to the public consistent with the Commission's obligation under NEPA to consider environmental effects, and also preserve the resources of the Commission and applicants for situations that may involve greater potential for significant

environmental effects. The Commission therefore seeks comment on whether DAS and small cell deployments are unlikely to have significant environmental effects and whether the Commission should adopt a categorical exclusion for some or all of the components involved in DAS and small cell deployments from NEPA review other than for compliance with RF exposure limits.

17. A typical DAS deployment includes a number of communications nodes, each typically consisting of an antenna or antennas either collocated on an existing support structure or deployed on a new structure, along with a cabinet containing associated equipment. In addition to the nodes, the DAS system includes a central hub site and fiber or other cabling connecting the nodes to the hub. Other small cell solutions may also include some or all of these components. If the Commission adopts the proposal discussed above to amend the first sentence of Note 1 to § 1.1306, it believes that it would effectively exclude the collocation of nodes for DAS, small cells, and other comparable wireless technologies from NEPA review, other than historic preservation review and review for compliance with its RF exposure limits. The Commission seeks comment on this analysis. Should the Commission adopt a special collocation exclusion for the communications nodes of DAS, small cell, and other small wireless technologies, either in addition to or instead of the proposed revisions to the existing categorical exclusion for collocations generally? If so, the Commission seeks comment on how to define the scope of the exclusion. The Commission explores this definitional question in greater detail below.

18. Assuming the Commission adopts a broadened collocation exclusion, either in general or specifically for small communications nodes, such an exclusion would not cover all construction that may be necessary to deploy DAS, small cells, and other small facilities. In particular, it would not cover new support structures, such as new poles, that are constructed to support communications nodes as part of a DAS or small cell deployment. The Commission seeks comment on whether some or all such construction should also be excluded from NEPA review. The Commission invites comment on the potential environmental effects of the construction or deployment of such new supporting structures and equipment, on whether the Commission may conclude that such facilities are unlikely to have significant environmental effects, and, if so, under

what circumstances (e.g., categories or locations).

19. If the Commission adopts a specific NEPA exclusion for DAS and other small wireless facilities, either for collocated facilities or for facilities deployed on new structures, how should the Commission define the scope or application of such an exclusion? PCIA initially proposed that the Commission define the scope of the exclusion by reference to DAS or small cell installations. The Commission is concerned, however, that defining an exclusion by reference to a specific wireless technology such as DAS may be both over-inclusive and under-inclusive. It may be over-inclusive because some facilities associated with the named technology could be larger and more obtrusive than contemplated in the general case and therefore have a greater potential for significant environmental effects. For example, future DAS deployments over different spectrum bands may require larger or higher antennas. A definition that relies exclusively on reference to a particular technology may also be under-inclusive in that other technologies that involve comparably unobtrusive wireless facilities may be developed that equally warrant an exclusion. For example, commercial uses of signal boosters (such as repeaters) may have characteristics similar to DAS and small cells such that they should be similarly eligible for any exclusion developed for DAS and small cell deployments. The Commission therefore believes that framing any exclusion based on objective physical factors such as height, size, or location could be a better approach than referencing a specific technology such as DAS. The Commission seeks comment on this analysis, and on how to craft an exclusion based on the dimensions and other objective characteristics of facilities, including all aspects of any such definition.

20. Specifically, the Commission seeks comment on how it can define the covered facilities to ensure that deployments eligible for the categorical exclusion have no more than *de minimis* effects on the environment and that changes to technology do not expand the exclusion beyond its intent. Should the Commission define any such categorical exclusion with reference to the height of the supporting structure, the size of the antenna, and the dimensions of the equipment cabinets or other ancillary equipment? If so, what dimensions should the Commission adopt as a definition? To the extent that the Commission adopts a new categorical exclusion that extends to new support structures, the Commission

seeks comment on how to define the structures that are eligible, the locations where the exclusion should apply, and any other conditions or criteria for eligibility that are necessary to ensure that such deployments do not have a significant effect on the environment.

21. The Commission notes that the size and architecture of antennas, supporting structures, and other equipment may depend in part on the characteristics of the service being provided, such as the spectrum used. Should the Commission strive to define any exclusion in a manner that is technologically neutral in effect as well as in form? If so, what definitions would best achieve this end? In order to assure that consumers can continue to benefit from technological development, should any size or other criteria the Commission applies attempt to anticipate potential future technological and industry developments?

22. The Commission also notes that PCIA and the HetNet Forum have recently submitted a new proposal for the definition of facilities that should be categorically exempt. This definition relies on defining the maximum cubic volume of the relevant facilities rather than on specific technological labels. PCIA and the HetNet Forum assert that their proposed definition has widespread industry support and both accommodates current DAS and small cell deployments and anticipates foreseeable technological development. Specifically, they propose that an installation conforming to the following parameters should be exempt:

(1) Equipment Volume. An equipment enclosure shall be no larger than seventeen (17) cubic feet in volume.

(2) Antenna Volume. Each antenna associated with the installation shall be in an antenna enclosure of no more than three (3) cubic feet in volume. Each antenna that has exposed elements shall fit within an imaginary enclosure of no more than three (3) cubic feet.

(3) Infrastructure Volume. Associated electric meter, concealment, telecom demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch may be located outside the primary equipment enclosure(s) and are not included in the calculation of Equipment Volume.

Volume is a measure of the exterior displacement, not the interior volume of the enclosures. Any equipment that is concealed from public view in or behind an otherwise approved structure or concealment, is not included in the volume calculations.

The Commission seeks comment on the proposed definition.

23. The Commission also seeks comment on whether any proposed exclusion should be defined in part by the location of facilities. For example, the NPA establishes an exclusion from routine section 106 review for deployments of wireless facilities, including deployments on new structures, located in utility or telecommunications rights-of-way. Specifically, deployments are not subject to section 106 review if (1) such facilities are located in or within 50 feet of a right-of-way designated for communications tower or above-ground utility transmission or distribution lines, (2) the facility would not constitute a substantial increase in size over existing structures in the right-of-way in the vicinity of the proposed construction, (3) the facility would not be located within the boundaries of a historic property, and (4) the applicant has successfully completed the process established in the NPA for Tribal and Native Hawaiian Organization participation. The Commission seeks comment on whether it should adopt a categorical exclusion from routine NEPA review for DAS and small cells in rights-of-way designated for utilities or telecommunications similar to the one in the NPA that applies to section 106 review. If so, should the Commission apply any of the NPA conditions for this categorical exclusion such as the one requiring that the facilities not constitute a substantial increase in size over existing nearby structures in the right-of-way? Would a rights-of-way categorical exclusion appropriately and effectively tailor NEPA review for DAS and small cells?

24. As another example of a location-based exclusion, Note 1 to § 1.1306 currently includes a categorical exclusion from all environmental review for the installation of aerial wire or cable over existing aerial corridors of prior or permitted use or the underground installation of wire or cable along existing underground corridors of prior or permitted use. PCIA proposes that the Commission similarly exclude DAS and small cell deployments, including deployments on new structures, that are placed along or within existing aerial or underground corridors. The Commission seeks comment on whether it should extend the wire and cable exclusion to cover components of DAS or small cell deployments in such corridors, including new support structures. Is there a basis for the Commission to conclude that DAS and small cell

deployments (whether on new or existing structures) do not individually or cumulatively have a significant effect on the quality of the human environment so as to qualify for a categorical exclusion from NEPA review under 40 CFR 1508.4? To the extent that these deployments require the deployment of fiber optic cable, is any amendment to the existing exclusion necessary, or does the existing exclusion for aerial or underground cables deployed in existing corridors adequately cover such components? With regard to other components including new structures, to what extent can such components be placed in or along aerial or underground corridors?

25. Finally, the Commission seeks comment on whether any categorical exclusion outside of existing aerial or underground corridors should include specific provisions for DAS and small cell components other than the nodes. For example, should the exclusion cover fiber that is not already excluded under the existing Note 1 to § 1.1306 exclusion for cable in existing aerial or underground corridors? If so, how should the Commission frame such an exclusion? Should the hub station also be included, and if so, in what circumstances? What additional revisions to the exclusion for existing aerial or underground corridors would expedite DAS and small cell deployment without risking significant environmental impact?

#### *B. Historic Preservation Review*

26. The Commission next seeks preliminary comment on whether and how the Commission should tailor section 106 review for effects on historic properties in the context of DAS, small cells, and similar facilities. As one option, the Commission seeks comment on whether the Commission can and should adopt an exclusion from section 106 review for such facilities. The Commission notes that whether to adopt such exclusion raises many of the same questions of definition and scope discussed above in connection with a possible exclusion from NEPA review, and the Commission invites commenters to consider the same questions in addressing whether the Commission should adopt an exclusion from section 106 review. Further, in the discussion below, the Commission refers back as appropriate to the issues raised by a possible NEPA exclusion. The Commission seeks comment, however, on whether and to what extent a section 106 exclusion raises different legal or policy issues. The Commission explores these and other issues that

relate specifically to section 106 review below.

27. The Commission also recognizes that changes to its section 106 processing rules may require coordination with the ACHP and NCSHPO and consultation with federally recognized Tribal Nations, and the Commission intends to undertake such coordination and consultation. Commission staff has written separately to Tribal leaders and to THPOs and Cultural Preservation Officials, informing them of section 106 priorities and issues for Tribal consultation, and inviting them to share their values and initial thoughts regarding tailoring of section 106 review for DAS and small cells. In an effort to prepare Tribal Nations for consultations, Commission staff has also discussed this matter at meetings of inter-Tribal government organizations.

28. *Options for Tailoring Historic Preservation Review.* PCIA identifies three possible avenues to tailor historic preservation review for DAS and small cell facilities: (1) categorical exclusion; (2) program alternative; or (3) finding that DAS and small cell deployments are not undertakings under section 106. PCIA favors the categorical exclusion approach as the most expeditious means to streamline the deployment of DAS and small cells and to facilitate wireless broadband deployment while maintaining historic preservation goals. According to PCIA, a rulemaking to add DAS and small cell solutions to the list of facilities that are categorically excluded from non-RF-related environmental processing under § 1.1306 (Note 1) would satisfy the Commission's responsibilities under the NHPA and the ACHP's section 106 regulations. In particular, PCIA relies on § 800.3(a)(1) of the ACHP's rules, which provides that an agency has no further section 106 obligations if the undertaking is a type of activity that does not have the potential to cause effects on historic properties assuming such historic properties were present. According to PCIA, this rule provides a categorical exclusion from the consultation process where there is no potential adverse effect or the environmental effects are *de minimis*. PCIA asserts that adopting a categorical exclusion through a notice-and-comment rulemaking would involve all interested parties, including the ACHP, but that, unlike the more elaborate program alternative processes authorized by § 800.14 of the ACHP's rules, it would require only a single proceeding, thus saving time and resources for all concerned. PCIA observes that the third option, finding

DAS and small cell deployments not to be undertakings, may be more vulnerable to protracted procedural and substantive challenges.

29. The Commission seeks comment on the alternatives of an exclusion in its rules or a program alternative under the ACHP rules, and the relative costs and benefits of each. The Commission invites commenters to discuss the potential effects of DAS and small cell systems on historic properties, as such an assessment is a key component in selecting an appropriate procedural mechanism to depart from the ordinary process for historic preservation review of a Federal undertaking. Does § 800.3(a)(1) of the ACHP's rules support an exclusion in circumstances where the potential for adverse effects is *de minimis*, as PCIA suggests, or only where there is no potential for any effects on historic properties? Commenters should also address the extent to which any revision of § 1.1306 (Note 1) to exclude DAS and small cell systems from section 106 historic preservation review would require that the Commission consult the ACHP, SHPOs, Tribal Nations and NHOs, or others. Given that either a Commission exclusion or an ACHP-approved program alternative would necessarily involve and revisit matters addressed in the NPA, what, if any, revision to the NPA would either option require? Does the very existence of the NPA favor or militate against adopting an exclusion in a rulemaking? Would a program alternative, providing the agency an opportunity to tailor a process for DAS and small cell systems in coordination with ACHP, offer greater flexibility or more significant benefits than a Commission exclusion? If the Commission were to pursue a program alternative, which of the various program alternatives authorized by § 800.14 of the ACHP's rules is most appropriate, considering their relative costs and benefits, consultative obligations, eligibility standards, and the time required to implement each alternative? Are there are other procedural mechanisms by which the Commission, either acting unilaterally or in coordination with the ACHP or others, could streamline any required historic preservation review of DAS or small cell systems?

30. The Commission notes that, while it proceeds with this rulemaking, it intends to work with ACHP and NCSHPO to explore the option of a program alternative to further tailor section 106 review for DAS, small cell, and similar facilities. Those efforts will also inform any steps the Commission takes as a result of this NPRM.

31. *Defining the Scope of the Exclusion.* Assuming the Commission excludes small wireless facilities from historic preservation review either through adoption of an exclusion or through one of ACHP's program alternatives, the Commission seeks comment on how to define the scope of the exclusion. In particular, as with the possible exclusion from NEPA review discussed above, the Commission seeks comment on how to define the facilities that would not be subject to review under these approaches. If the Commission does adopt an exclusion for small facilities that covers both section 106 and NEPA review, should the Commission define the facilities excluded from section 106 review the same way the Commission does the facilities excluded from NEPA review? While there may be administrative advantages to adopting the same definition, there may also be circumstances where a facility that meets criteria for an exclusion under NEPA does not meet the criteria for an exclusion under section 106 and vice versa. For example, Note 1 to § 1.1306, which provides a categorical exclusion for collocations on an existing building or antenna tower for most purposes under NEPA, does not extend to review under section 106.

32. In order to define the scope of an exclusion or program alternative, the Commission seeks comment on whether and under what circumstances DAS and small cell facilities, individually and cumulatively, are unlikely to cause an adverse effect on historic properties. Are there some circumstances, such as placement of facilities in historic districts or collocations near or on historic buildings, where there is a potential for significant effects on historic properties? If so, what conditions, criteria, or definitions should the Commission use to identify situations in which routine section 106 review may be appropriate while maintaining an exclusion in the ordinary case? In the alternative, is it sufficient to rely on §§ 1.1307(c) and (d) of the Commission's rules, which direct the reviewing bureau to require an Environmental Assessment (EA) for an otherwise categorically excluded deployment where, on its own motion or in response to public petition, the bureau finds that the deployment may have a significant environmental impact?

33. While the general provisions of the Collocation Agreement and the NPA already exclude many DAS and small cell facilities from some or all of the section 106 review process, PCIA notes two provisions that limit the

applicability of the exclusions in this context. First, the Collocation Agreement, while excluding most collocations from section 106 review, provides that collocations on existing buildings or other non-tower structures that are over 45 years old are not excluded. PCIA asserts that the percentage of utility poles that are 45 years or older is significant and growing and that, as a consequence, collocations of small wireless facilities on such existing poles will increasingly not be excluded from review. Second, the NPA provides a partial exclusion for deployments (including new poles) in or near utility rights-of-way, but with certain limitations. Critically, this exclusion does not apply if the deployment would be located within the boundaries of a historic property. PCIA asserts that corridors including utility and highway rights-of-way are increasingly being found eligible for the National Register, thus reducing the availability of this exclusion.

34. The Commission seeks comment on whether, if it finds that a comprehensive exclusion for DAS and small cells is not appropriate through either an exclusion or a program alternative, the Commission should address one or both of these specific concerns or tailor review for any other categories of small facility deployments other than those that are currently excluded under the NPA or the Collocation Agreement. First, with respect to collocations on non-tower structures that are over 45 years old, the Commission notes that, because utility poles are being maintained for long periods of time, it is likely that most utility poles will eventually fall out of the NPA exclusion. Given that the NPA was adopted when use of structures such as utility poles for wireless communications facilities was extremely rare, the Commission seeks comment on whether review of collocations on older utility poles was intended, in what ways such structures might possess historic value, and to what extent collocation may result in adverse effects to that historic value. The Commission seeks comment on whether it can and should clarify or otherwise provide that the provision requiring review of collocations on buildings and other structures over 45 years old is not applicable to a utility pole that is over 45 years of age. If so, how should the Commission define a utility pole for such purpose? Should the Commission exclude other categories of non-tower structures, such as street lamps or water towers?

35. With regard to the second issue, as noted above, according to PCIA, use

of utility corridors for DAS and small cell deployment is becoming more difficult because such corridors are increasingly being considered historic properties or districts, and thus both new poles and collocations in such rights-of-way are becoming subject to routine section 106 review under the Collocation Agreement and the NPA. The Commission seeks comment on whether collocations and new pole deployments in utility or communications rights-of-way that otherwise fall within the exclusions in the Collocation Agreement or the NPA should be exempt from the section 106 historic preservation review process regardless of whether such rights-of-way are considered historic properties. Would additional infrastructure potentially have significant effects on historic properties if located in utility corridors that are already lined with utility poles and other infrastructure of similar size? Are there any particular circumstances that may suggest that a different result is appropriate, such as, for example, if utility poles are a contributing element towards making a corridor a Historic District?

36. The Commission also notes an additional issue that arises when a collocation requires an existing utility pole to be replaced with a new pole. The NPA currently provides that the construction of a new tower that replaces an existing tower is excluded from routine section 106 review if it meets certain criteria. The NPA does not, however, address replacements of utility poles or other non-tower structures. AT&T has suggested that the Commission extend the exclusion for replacement towers to cover replacements of non-tower structures. The Commission seeks comment on this proposal, and in particular, whether the Commission should provide, through an exclusion or a program alternative, for an exclusion from routine section 106 review for replacement utility poles. If so, should the Commission limit it to circumstances where the new pole is no larger than the existing pole or where there is not a substantial increase in size? Should the exclusion apply if the replacement is constructed with different materials?

37. Finally, the Commission seeks comment on whether, to the extent DAS, small cell, and other small facilities are not excluded from historic preservation review, the Commission could still develop a process that would enable the review to proceed more efficiently. For example, the Commission seeks comment on whether and how to define circumstances in which individual communication nodes

(e.g., the separate antenna nodes of a single DAS deployment) can be grouped together and reviewed as a single undertaking for historic preservation review. The Commission further seeks comment on whether and to what extent such changes may be implemented as a matter of process by the bureaus without any amendment of the NPA or the Commission's rules.

### C. Other Considerations

38. As noted above, in an ex parte submission in the *NOI* proceeding, PCIA suggests that the Commission could find that DAS and small cell deployments are not Federal undertakings under the NHPA pursuant to an NPA provision that grants it sole authority to determine what activities undertaken by the Commission or its applicants constitute undertakings within the meaning of the NHPA. In light of PCIA's suggestion, the Commission seeks comment on the extent to which deployments of DAS or small cell facilities qualify as Federal undertakings under the NHPA and major Federal actions under NEPA. The Commission invites commenters to analyze this issue in terms of the extent to which the Commission provides, or has the authority to provide, Federal licensing, approval, or other assistance for such deployments, and also to consider the effects of such deployments on the environment and historic preservation. In particular, section 319 of the Communications Act generally confers on the Commission authority to regulate and require pre-construction approval for the construction of any facility for which a license is required, which in turn extends to any apparatus for the transmission of energy, or communications, or signals by radio. Further, while the Commission has generally waived the requirement of pre-construction approval for geographic-area licensees, as permitted by section 319(d), the Commission has also retained a limited approval authority under § 1.1312 of the Commission's rules to review the environmental effects of all facilities. The Commission has found, given these provisions, that macro site deployments are appropriately classified as Federal undertakings, a conclusion affirmed by the United States Court of Appeals for the District of Columbia. Is there a difference in how these provisions apply to DAS facilities and small cells as compared to macrocells and the towers on which they are mounted that would justify distinguishing the deployment of DAS and small cell facilities for purposes of classification as a Federal undertaking and major Federal

action? Is the only distinguishing factor that the physical characteristics of DAS and small cells may make them less intrusive than traditional macro sites? The Commission invites commenters to describe any other differences that potentially warrant different treatment under the NHPA and NEPA, and to explain specifically how these differences affect the analysis of whether these deployments are Federal undertakings and major Federal actions.

39. Assuming DAS and small cell deployments are Federal undertakings within the meaning of the NHPA and major Federal actions under NEPA, the Commission seeks comment on how and by what mechanisms the Commission might implement either of the options discussed above—categorical exclusion or program alternative. Under the Commission's existing rules and processes, where no site-by-site filing is otherwise required for a facility, a licensee is required to ensure compliance with the environmental rules before constructing a facility, but is not required to file any site-by-site certification. In particular, such a licensee planning to construct a new facility must ascertain if a proposed facility may have a significant environmental impact. If so, the licensee must submit the required documentation for an environmental assessment on which the Commission must complete environmental processing before construction may be initiated. Is this process appropriate for the potential exemptions discussed above? Should the Commission consider developing documentation requirements for demonstrating eligibility for any of the exemptions under consideration in this NPRM? Would the costs of such documentation requirements outweigh the benefits? What mechanism might be appropriate to address cases in which eligibility for the exemption is unclear?

40. The Commission emphasizes that if it excludes any class of DAS and small cell deployments or other small facilities deployments from all routine environmental processing, including section 106 historic preservation review, such deployments would still be subject to §§ 1.1307(c) and (d) of the Commission's rules. Thus, the relevant processing bureau would still require the filing of an EA if, either on its own motion or in response to a complaint from the public, the bureau determines that a particular action may cause significant environmental effects. In addition, deployments that are eligible for the exclusions discussed in this section would still be subject to any applicable notice requirements.

### III. Environmental Notification Exemption for Registration of Temporary Towers

41. In this section, the Commission proposes to adopt a limited exemption from the environmental notification requirements that is substantially similar to the exemption proposed by CTIA. Specifically, and consistent with the interim exemption granted in the *Waiver Order*, 78 FR 59929, September 30, 2013, the Commission proposes an exemption from its Antenna Structure Registration (ASR) environmental notification requirements for temporary antenna structures that, because of their characteristics, do not have the potential for significant environmental effects. The Commission seeks comment on how to define such an exemption, and whether the criteria set out in the *Waiver Order* are sufficient and appropriate for this purpose. Under these criteria, an antenna structure would be exempt from the notification requirements if it (i) will be in use for 60 days or less, (ii) requires notice of construction to the Federal Aviation Administration (FAA), (iii) does not require marking or lighting pursuant to FAA regulations, (iv) will be less than 200 feet in height, and (v) will involve minimal or no excavation. The Commission seeks comment on its proposal and on alternative approaches to address the concerns raised in the CTIA petition.

42. In considering the proposed exemption, the Commission recognizes that one of its responsibilities under NEPA is to facilitate public involvement in agency decisions that may affect the environment. CEQ regulations direct that agencies shall make diligent efforts to involve the public in preparing and implementing their NEPA procedures and solicit appropriate information from the public. At the same time, an agency has wide discretion in fashioning its own procedures to implement its environmental obligations, and considerable discretion under CEQ regulations to decide the extent to which such public involvement is practicable. Consistent with the discretion to identify particular circumstances in which inviting public involvement is impracticable or inappropriate, the Commission proposes to find that the environmental notice requirements will typically be impracticable for temporary towers that meet the criteria outlined above. The Commission further proposes to find that the risk that carriers will not be able to meet short-term capacity needs and the resulting detriment to the public if they are required to complete the

notification process outweighs the small likelihood that the process will confer any benefit. The Commission also notes that parties filing comments in response to the *Temporary Towers Petition PN* uniformly supported an exemption for antenna structures meeting the criteria set out by CTIA. The Commission therefore tentatively concludes that establishing the proposed exemption is consistent with its obligations under NEPA and CEQ regulations, and will serve the public interest.

43. Commenters state that the environmental notification process is impracticable for antenna structures meeting the criteria set out by CTIA and will interfere with carriers' ability to respond to short-term capacity needs. The ASR notice process takes approximately 40 days, as carriers must provide local and national public notice, allow 30 days for the filing of any requests for further environmental review, and wait for the Commission to clear the tower for a final certification. If a request for environmental review is filed, the deployment can be delayed longer even if the request lacks merit. According to commenters, situations frequently arise where there is insufficient time to complete this process before a temporary tower must be deployed to meet near-term demand, including (1) newsworthy events that occur without any prior notice and require immediate deployments, such as natural disasters; (2) other events that occur with less than 30 days advance notice, such as certain political events and parades for sports teams; (3) events for which the timing and general location are known in advance, but where the specific locations for temporary towers are unknown until days before the event, such as State fairs and major sporting events; and (4) situations in which unexpected difficulties with permanent structures require the deployment of temporary towers while permanent facilities are repaired. The record, as well as the Commission's own experience in administering the environmental notice rule, shows that substantial numbers of such non-emergency temporary towers require registration. In particular, notice to the FAA (and therefore ASR registration) is necessary for towers under 200 feet in height if they may interfere with the flight path of a nearby airport. Therefore, absent an exemption, application of the ASR notice process to these temporary towers will apparently prevent service providers from meeting important short term coverage and capacity needs. The Commission seeks comment on this analysis.

44. At the same time, the benefits of environmental notice appear to be limited in the case of most temporary towers. The environmental notice process is intended to effectuate the opportunity conferred by § 1.1307(c) of its rules for interested persons to allege that an otherwise categorically excluded ASR application presents circumstances necessitating environmental consideration in the decision-making process. Thus, to the extent that significant environmental effects are highly unlikely for certain classes of temporary towers, there seems to be little reason to require environmental notification, particularly given the harm to the public from delaying the deployment of such towers. The Commission seeks comment on this analysis, and on whether the criteria proposed by CTIA in the *Temporary Towers Petition*, as modified in the *Waiver Order*, sufficiently insure against potential environmental impact or risk to air safety from such towers.

45. In particular, CTIA proposes that, to be exempt from notice, a temporary tower must be less than 200 feet in height and not subject to FAA marking or lighting requirements. The Commission seeks comment on these conditions. Evidence demonstrates that lighting and height are major factors influencing whether an antenna structure may cause significant environmental impacts, particularly on migratory birds. Given this evidence, is it necessary that, in addition to the height and lighting restrictions, eligible temporary towers be limited to those that do not require marking? Is a requirement that eligible temporary towers be less than 200 feet in height a sufficient height limitation to protect against significant environmental impacts? Is it too strict?

46. In adopting an interim waiver, the Commission added a condition that deployments covered by the waiver either must involve no excavation or the depth of previous disturbance must exceed the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet. That specific requirement was drawn from the NPA, which excludes towers from section 106 historic preservation review if they are deployed for less than 24 months and also meet this condition. As the Commission explained in adopting the NPA, so long as no excavation will occur on previously undisturbed ground, the risk of damage to archeological or other historic properties from a temporary facility is small. The Commission seeks comment on whether to similarly require no or minimal excavation as a condition of

the proposed temporary towers exemption from environmental notice. Is such a condition necessary to assure that such towers are unlikely to have significant environmental effects, and what are the costs of the condition? Are effects on historic properties the only concern with excavation, and, if so, is section 106 review under the NPA, which includes a process for public participation, sufficient to protect against such effects? Should the Commission adopt any other structural or construction conditions in addition to or in lieu of those proposed in the *Waiver Order*?

47. Consistent with CTIA's proposal in its Petition, the Commission proposes to limit the temporary towers exemption from notice to towers that will be deployed for no more than 60 days. The Commission seeks comment on this time period. The Commission notes that the NPA excludes from review under section 106 of the NHPA a broader category of temporary towers, generally defined as towers that will remain in place for up to 24 months. Further, NTCH proposes that the maximum period be three months instead of two. Would exempting from notice temporary towers that are deployed for longer than 60 days be consistent with avoiding a potential for all significant environmental effects, not only those on historic properties? Is it reasonable to expect that parties deploying a tower for more than 60 days will ordinarily have sufficient advance notice to complete the environmental notice process, and therefore should either do so or obtain a case-specific waiver? Alternatively, is a period shorter than 60 days both reasonable and necessary to protect against significant environmental effects? The Commission also notes that the NPA permits temporary towers used for national security purposes to exceed 24 months and still be excluded from section 106 review. Should the Commission adopt a similar exception to whatever time limit the Commission applies to the notification exemption?

48. The Commission proposes to require no post-construction environmental notice for temporary towers that qualify for the exemption. While the Commission ordinarily requires that environmental notice be provided within a short period after construction when pre-construction notice is waived due to an emergency situation, the Commission recognized in the *Order on Remand*, 77 FR 3935, January 26, 2012, that in some circumstances, post-construction notice may be impractical or not in the public interest. While towers subject to emergency waiver relief may be

deployed for long periods or even indefinitely, thus warranting post-construction notice, the Commission addresses here only towers deployed for short periods of time. Notice in this circumstance would seem to serve little purpose as the deployment would be over or nearly so by the time the notice period ended. In addition, its own experience in administering the ASR public notice process is that temporary antenna structures rarely generate public comment regarding potentially significant environmental effects and rarely are determined to require further environmental processing. The Commission therefore proposes to find that it would not be in the public interest to require post-construction notice for towers subject to the proposed exemption. The Commission seeks comment on its proposal and analysis, and on the costs and benefits of requiring post-construction notice of towers subject to the exemption. As an alternative to completely exempting such towers from environmental notification, would it be appropriate to establish a shorter post-construction environmental notice period or limit the notice requirement to national notice?

49. CTIA states in its Temporary Towers Petition that under its proposal, towers exempted from environmental notice would still be required to comply with the Commission's other NEPA rules, including the obligation to certify environmental compliance on a completed ASR application and to file an EA in appropriate cases. The Commission proposes to retain these requirements. The Commission notes that, as part of the NEPA rules, even if a specific facility is categorically excluded from environmental processing under § 1.1306, the reviewing bureau shall require the filing of an EA under §§ 1.1307(c) and (d) of the rules if the bureau determines the deployment may have a significant environmental impact. The Commission also notes that where an EA is filed for a registered tower, the Commission puts the EA on public notice for 30 days and also requires the applicant to provide local notice unless local notice was previously completed for that tower. The Commission proposes that if an applicant determines that it needs to complete an EA for a temporary tower that would otherwise be exempt from environmental notice, or if the bureau makes this determination under §§ 1.1307(c) or (d), the application with an EA would not be exempt from environmental notice. Alternatively, should the Commission provide that temporary towers that require an EA are

eligible for the exemption, or that they would be subject to national but not local notice?

50. The Commission notes that under the NPA, the exclusion from section 106 review for temporary towers expressly includes but is not limited to the following: a cell on wheels (COW) transmission facility, a broadcast auxiliary services truck, a TV pickup station, a remote pickup broadcast station (e.g., electronic newsgathering vehicle) authorized under part 74, a temporary fixed or transportable earth station in the fixed satellite service (e.g., satellite newsgathering vehicle) authorized under part 25, a temporary ballast mount tower, or any facility authorized by a Commission grant of an experimental authorization. CTIA's Temporary Towers Petition does not specify the types of temporary towers that would be eligible for the exemption, apart from the other criteria CTIA proposes. Should the Commission list or provide examples of specific types of facilities potentially eligible for an exemption from its environmental notification rules? What would be the purpose of limiting the exemption to listed facilities? If the Commission does specify a list of facilities eligible for the exemption, should the Commission replicate or modify in any way the list provided in the NPA? Could limiting the exemption to listed facilities have unintended consequences, such as inadvertently excluding new technologies or types of structures?

51. The Commission seeks comment on what process should apply when an applicant determines, subsequent to registering a tower under the temporary towers notification exemption, that the relevant tower will or may be needed beyond the maximum period for the exemption. Should the Commission adopt a process for extending the period the tower may remain in place without environmental notice? Alternatively, should the Commission condition the grant of the exemption on the requirement that, if the applicant needs the tower beyond the maximum period for the exemption, it must either: (1) Provide environmental notification before the end of the specified period; (2) obtain a case-specific waiver; or (3) remove the tower at the end of the permitted period and not redeploy it until environmental notice has been completed? Should there be any other consequences for exceeding the maximum period, even if post-construction notice is subsequently provided?

52. Finally, the Commission seeks comment generally on the costs and benefits of the proposed exemption. The

Commission asks commenters to quantify costs and benefits and provide supporting evidence, where possible. If the Commission determines that there is no or very little potential for significant environmental effects from these antenna structures, would environmental notification confer any benefits? If so, would they be outweighed by the costs from delays that might prevent deployment of these towers and result in a loss of service to the public? The Commission specifically seeks comment on the costs and benefits of the exemption as measured against the alternative of applying a case-by-case waiver process similar to that which applies to emergency situations. Under this case-by-case waiver process, applicants are required to file a waiver request and wait for a bureau determination of whether to grant the request. AT&T states that a waiver process similar to that which currently applies to emergency situations is an inefficient approach for the narrow category of temporary towers within the scope of its proposal and creates unnecessary uncertainty and delay. The Commission seeks comment on the costs of the case-by-case waiver process that would be avoided by adopting a rule. The Commission also seeks comment on the potential that an exemption by rule would be over-inclusive, and on any costs that might result.

#### IV. Implementation of Section 6409(a)

53. The Commission tentatively finds that it will serve the public interest to establish rules clarifying the requirements of section 6409(a) to ensure that the benefits of a streamlined review process for collocations and other minor facility modifications are not unnecessarily delayed. As the Commission noted in the *Sixteenth Competition Report*, 28 FCC Rcd 3700 (2013), collocation on existing structures is often the most efficient and economical solution for mobile wireless service providers that need new cell sites, either to expand their existing coverage area, increase their capacity, or deploy new advanced services.

54. Since Congress adopted section 6409(a) more than a year ago, parties have expressed widely divergent views as to the meaning of its terms and the scope of its requirements. Although the Wireless Telecommunications Bureau's release of the *Section 6409(a) PN*, see Wireless Telecommunications Bureau Offers Guidance on Interpretation of section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, *Public Notice*, 28 FCC Rcd 1 (WTB 2013) (*Section 6409(a) PN*), provided

guidance on certain questions of interpretation under this provision, the bureau left other issues unaddressed, and parties have also raised questions and concerns regarding the *Section 6409(a) PN* guidance itself. While these issues could be addressed in practice through local interpretations, judicial decisions, and voluntary agreements, the Commission believes on balance it serves the public interest for us proactively to seek comment at this time on implementing rules to define terms that the statute leaves undefined, and to fill in other interstices that may serve to delay the intended benefits of section 6409(a). The Commission invites comment on its decision to do so and on any reasons why the Commission should limit or decline to take regulatory action in this proceeding.

55. In particular, the Commission anticipates that, in the absence of definitive guidance from the Commission, the uncertainties under section 6409(a) may lead to protracted and costly litigation and could adversely affect the timely deployment of a nationwide public safety network and delay the intended streamlining benefits of the statute with respect to other communications services. Further, addressing the interpretation of section 6409(a) in a rulemaking, with notice and opportunity for comment, will provide a broader opportunity for participation and input in the implementation of this provision than, for example, one or more adjudicatory proceedings. In addition, the Commission believes that State and local governments, FirstNet, Commission licensees, and tower companies will benefit from having settled interpretations on which they can rely in determining how to comply with the new law. The Commission therefore takes this opportunity to examine section 6409(a) and to seek public comment on its interpretation. The Commission seeks comment on this reasoning.

56. The Commission acknowledges, however, that there may also be countervailing benefits to offering governments additional opportunity to implement some or all of the provisions of section 6409(a) before adopting prescriptive rules. Such an approach would provide State and local governments more opportunity and flexibility to develop solutions that best meet the needs of their communities consistent with the requirements of the provision and may also help to distinguish those issues that require clarification by the Commission from those on which there is general consensus. In particular, the Commission believe that best practices

or model ordinances that reflect a consensus of industry and municipal interests may facilitate the practical and efficient implementation of section 6409(a), and the Commission is aware of ongoing discussions between industry and municipal government representatives in that regard. Therefore, the Commission invites comment on whether it should refrain from addressing any or all of the issues discussed below at the present time, on how the Commission might encourage efforts to develop best practices for applying section 6409(a), and on what role best practices might play in the interpretation or implementation of this statutory provision.

57. The Commission also notes legislative efforts by State and local governments to streamline their collocation review processes in response to section 6409(a) and other considerations. The Commission seeks comment on how it could accommodate and encourage such efforts consistent with section 6409(a) and the factors discussed above. In particular, the Commission seeks comment on how this consideration affects whether and to what extent the Commission should leave issues unaddressed at this time. The Commission also seeks comment on other ways in which principles of federalism should inform its approach to implementation of section 6409(a). In this connection, the Commission notes that its goal is not to operate as a national zoning board. Rather, the Commission seeks to implement and enforce the intent of Congress to make compliance with Federal standards a precondition to continued State regulation in an otherwise pre-empted field. In establishing such Federal standards, how should the Commission most appropriately address the traditional responsibility of State and local governments for land use matters?

58. To the extent that the Commission does adopt rules implementing section 6409(a), the Commission also seeks comment on whether it should provide a transition period to allow States and localities time to implement the requirements in their laws, ordinances, and procedures. If so, how would the Commission establish such a mechanism consistent with the provision, and what transition period would be appropriate?

##### 1. Terms in Section 6409(a)

59. Under section 6409(a), states and localities must grant an eligible facilities request, defined as any request for modification of an existing wireless tower or base station that involves collocation, removal or replacement of

transmission equipment, if the request does not substantially change the physical dimensions of the tower or base station. The Commission will refer to an eligible request that does not substantially change the physical dimensions of the tower or base station, and therefore that shall be approved and must not be denied, as a covered request.

60. The scope of section 6409(a) depends on the proper interpretation of a number of terms. The Commission seeks comment on how to interpret or define these terms, including “transmission equipment,” “existing wireless tower or base station,” “substantially change the physical dimensions,” and “collocation,” as they are used in and apply to an eligible facilities request under section 6409(a). The Commission also seeks comment on whether the term eligible facilities request itself requires any further clarification beyond the statutory definition provided in section 6409(a)(2). Commenters addressing these issues are strongly encouraged to offer specific definitions.

61. *Transmission equipment and wireless.* Section 6409(a) refers broadly to transmission equipment without referencing any particular service. Similarly, in defining eligible facilities to be modified, it refers broadly to a wireless tower or base station. In contrast, section 332(c)(7) of the Act, an older provision that also places limits on State and local authority to regulate wireless facility siting, extends only to facilities used for personal wireless services as defined in that section. In the *Section 6409(a) PN*, the bureau opined that the scope of a wireless tower or base station under section 6409(a) is not intended to be limited to facilities that support personal wireless services under section 332(c)(7), given Congress’s decision not to use the pre-existing definition from another statutory provision relating to wireless siting.

62. Consistent with the bureau’s interpretation, the Commission proposes to find that section 6409(a) applies to the collocation, removal, or replacement of equipment used in connection with any Commission-authorized wireless transmission, licensed or unlicensed, terrestrial or satellite, including commercial mobile, private mobile, broadcast, and public safety services, as well as fixed wireless services such as microwave backhaul or fixed broadband. Similarly, the Commission proposes to define a wireless tower or base station to include one used for any such purpose. The Commission believes this interpretation

is warranted given the clear intent of Congress to facilitate collocation, the substantial number of broadcast and public safety towers that are potentially available for wireless collocation and that are, in many cases, already being used for collocation, and Congress’s use of the term wireless rather than a more restrictive term. The Commission also notes that the definitions of tower under both the Collocation Agreement and NPA have a similarly broad scope, encompassing structures used to support any Commission-licensed or authorized service. The Commission seeks comment on its proposal and on whether there is a reason to exclude any type of services. With respect to the service involved, should the scope of transmission equipment to be collocated, replaced, or removed be different from the scope of structures to be modified? If the Commission were to exclude structures used for certain services, how would the Commission treat a tower or other structure that is used or usable for multiple types of service? What about a tower that is not yet used for any service?

63. The Commission proposes to further define transmission equipment to encompass antennas and other equipment associated with and necessary to their operation, including, for example, power supply cables and a backup power generator. The Commission believes this is consistent with Congressional intent to streamline the review of collocations and minor modifications and also with Congress’s use of the broad term transmission equipment rather than a more specific term such as antenna. The Commission seeks comment on this proposal and analysis. In particular, the Commission seeks comment on including backup power equipment in light of the public interest in continued service during emergencies. The Commission also seeks comment on whether it should specifically include or exclude any equipment to be considered as transmission equipment under section 6409(a).

64. The NPA defines antenna in part as an apparatus designed for the purpose of emitting radio frequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a tower, structure, or building as part of the original installation of the antenna. Should the

Commission adopt or adapt this definition of antenna to define the term transmission facility under section 6409(a)?

65. *Existing wireless tower or base station.* The Commission seeks comment on how to define wireless tower or base station under section 6409(a). Initially, the Commission notes that both tower and base station have been previously defined in Commission rules and documents. Under the Collocation Agreement, a tower is defined as any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities. The NPA includes a similar definition of a tower as any structure built for the sole or primary purpose of supporting Commission-licensed or authorized antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower but not installed as part of an antenna. In part 90 of the Commission’s rules, base station is defined as a station at a specified site authorized to communicate with mobile stations, whereas part 2 and part 24 of the Commission’s rules define base station as a land station in the land mobile service. As noted in the *Section 6409(a) PN*, the Commission has also described a base station in more detail as consisting of radio transceivers, antennas, coaxial cable, a regular and backup power supply, and other associated electronics. The Commission seeks comment generally on the relevance of these definitions for defining wireless tower or base station under section 6409(a).

66. The Commission seeks comment on the types of structures that may be considered a wireless tower or base station under section 6409(a). At a minimum, tower would appear to include, as in the NPA, structures built for the sole or primary purpose of supporting antennas used for any wireless communications service. However, many other types of structures, from buildings and water towers to streetlights and utility poles, may also support antennas or other base station equipment. The Commission also notes that the Commission has encouraged the use of these types of structures to enhance capacity for wireless networks. In the *Section 6409(a) PN*, the bureau opined that it is reasonable to interpret a base station to include a structure that supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station under section 6409(a). The Commission proposes to

find, consistent with the bureau's guidance, that the term wireless tower or base station should be interpreted to encompass structures that support or house an antenna, transceiver, or other associated equipment that constitutes part of a base station, even if they were not built for the sole or primary purpose of providing such support. In particular, the Commission believes that interpreting section 6409(a) to include structures that house or support base station equipment not only is consistent with Congressional intent to streamline the facilities application process, but also accords with established principles of statutory construction by giving separate meaning to the term base station as well as tower. The Commission seeks comment on this interpretation. Should this definition be limited in any way? For example, should a building or cabinet with equipment inside be included in this definition? Is it material to the application of section 6409(a) whether a structure is a tower or a base station, and if so, how should the Commission distinguish these terms?

67. The Intergovernmental Advisory Committee (IAC) argues that base station should not be interpreted to encompass structures that support or house only part of a base station. Rather, the IAC argues, any interpretation of base station should reflect that a base station is a set of equipment components that collectively provides a system for transmission and reception of personal wireless services. The Commission seeks comment on the IAC's argument.

68. The Commission also seeks comment on what equipment constitutes a base station under section 6409(a). The Commission proposes, consistent with the definition of transmission equipment proposed above, to include antennas, transceivers, and other equipment associated with and necessary to their operation, including coaxial cable and regular and backup power equipment. The Commission seeks comment on this proposal. Should the equipment that constitutes a base station be defined in the same way as transmission equipment, more expansively, or less expansively? Should structures housing any particular type of equipment not be included? The Commission further seeks comment on how to ensure that the definition of base station is sufficiently flexible to encompass, as appropriate to section 6409(a)'s intent and purpose, future as well as current base station technologies and technological configurations, using either licensed or unlicensed spectrum. In the *Section 6409(a) PN*, the bureau

indicated that the term base station encompasses the relevant equipment in any technological configuration, including DAS and small cells. The Commission seeks comment on whether to adopt this interpretation, and on what constitutes the base station in the context of DAS or other wireless technologies where the various components of what might traditionally be considered a base station are dispersed over a large area and may be owned or controlled by different parties.

69. Under section 6409(a), a wireless tower or base station must be existing in order for its modification to be covered. In the *Section 6409(a) PN*, the bureau opined that an existing base station only includes a structure that currently supports or houses base station equipment. Verizon, however, argues that modifications of base stations encompass collocations on buildings and other structures, even if those structures do not currently house wireless communications equipment. Verizon argues that the Collocation Agreement defines collocation as encompassing the mounting of an antenna on an existing building or structure, and that collocations in section 6409(a) should therefore be given similar scope. The Commission seeks comment on this argument. Does existing require only that the structure be previously constructed at the time of the collocation application, or does this term also require that the structure be used at that time as a tower or base station? Do the statutory language and context argue in favor of one interpretation or the other? Which interpretation, or some other, would be more consistent with both facilitating deployments that are unlikely to conflict with local land use policies (including policies that favor use of existing structures) and preserving State and local authority to review construction proposals that may have impacts? Should the interpretation of existing depend on the type of structure involved? For example, should the Commission consider a structure built for the primary purpose of supporting or housing transmission equipment existing under section 6409(a) whether or not it currently hosts such equipment, while considering other structures existing only if they currently support or house transmission equipment?

70. The Commission asks commenters, when discussing the scope of support structures encompassed by section 6409(a), to discuss the economic costs and benefits of adopting their proposed interpretation and how these might relate to the intent of Congress.

Are there different costs and benefits to mandatory approval depending on the type of structure involved?

71. *Collocation, removal, and replacement.* The Commission seeks comment on how to define or interpret the terms collocation, removal, and replacement. Under the Collocation Agreement, collocation is defined as 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. The Commission seeks comment on whether to adopt a similar definition of collocation under section 6409(a).

72. The Commission also proposes to interpret a modification of a wireless tower or base station to include collocation, removal, or replacement of an antenna or any other transmission equipment associated with the supporting structure, even if the equipment is not physically located upon it. The Commission notes that the Collocation Agreement similarly construes the mounting of an antenna on a tower to encompass installation of associated equipment cabinets or shelters on the ground. The Commission seeks comment on its proposed interpretation.

73. The Commission seeks comment on whether and to what extent a request to replace or harden a tower or other covered structure should be considered a covered request if the replacement would not substantially change the physical dimensions of the structure. For example, under some circumstances, a tower may need to be replaced, reinforced, or otherwise hardened in connection with an upgrade from 3G to heavier 4G facilities. Should replacement of the underlying structure be covered if it is necessary to support the otherwise covered collocation or replacement of transmission equipment? What if the replacement is constructed with different materials, such as if a wooden pole must be replaced with steel? Should a requested structure replacement be covered only for certain types of structures, such as those originally constructed for the sole or primary purpose of supporting communications equipment?

74. *Substantially Change the Physical Dimensions.* The Commission seeks comment on whether and how to define when a modification would substantially change the physical dimensions of a wireless tower or base station.

75. As the bureau noted in the *Section 6409(a) PN*, the Collocation Agreement establishes a four-prong test to

determine whether a collocation will effect a substantial increase in the size of a tower. The Commission later adopted the same test in the 2009 *Declaratory Ruling* to determine whether an application will be treated as a collocation when applying section 332(c)(7). The Commission has also applied a similar definition to determine whether a modification of an existing registered tower requires public notice for purposes of environmental review.

76. Under this test, a substantial increase in the size of the tower occurs if:

(1) [t]he mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(2) [t]he mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(3) [t]he mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

(4) [t]he mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

77. The Commission seeks comment on whether to adopt the Collocation Agreement's definition of substantial increase in the size of the tower as the test for when a modification will substantially change the physical dimensions of a tower or base station under section 6409(a). If the Commission does so, should the Commission apply this test to all modification requests, including collocation, replacement, and removal of transmission equipment? Or should

the Commission modify or clarify any of the prongs of that test for any type of requests?

78. In determining what constitutes a substantial change in physical dimensions under section 6409(a), the Commission seeks comment on how to address situations where the tower or other structure has been previously modified since it was originally approved. For example, it is theoretically possible that successive increases of 10 percent could cumulatively increase the height of a structure by double or more. In such situations, should the physical change in dimensions resulting from a collocation be measured based on the structure's original dimensions or the existing dimensions taking into account all pre-existing modifications? Should it matter if previous expansions occurred before or after the enactment of section 6409(a)?

79. The Commission also seeks comment on whether the standard for what constitutes a substantial change should be different depending on the type of structure to be modified. As the Commission noted above, the Collocation Agreement definition applies to towers, defined as any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities. Should a different standard apply to other types of structures that may be defined as towers or base stations, such as buildings or utility poles? For example, what are the potential effects of adding up to 10 percent to the height of a building? Is a standard that allows for separation from the nearest existing antenna of up to twenty feet appropriate for structures that are much shorter than traditional towers, such as utility poles? The Commission further seeks comment on whether a different test should apply to stealth structures, structures and associated base stations that have been constructed to blend in with their surroundings. Should changes in physical dimensions that would defeat or be inconsistent with the stealth characteristics of the structure be considered substantial?

80. The Commission also seeks comment on the views of the IAC regarding when a modification will substantially change the physical dimensions of a tower or base station. In particular, the IAC argues that the question of substantiality cannot be resolved by the adoption of mechanical percentages or numerical rules applicable anywhere and everywhere in the United States, but rather must be evaluated in the context of specific installations and a particular

community's land use requirements and decisions. As an example, the IAC suggests that a change in a tower's height of only 5 percent that would adversely affect substantial safety, esthetic, or quality-of-life elements would represent a substantial change in physical dimensions. The Commission seeks comment on this interpretation, and on how, consistent with the IAC's interpretation, the Commission might define the test for what constitutes a substantial change in physical dimensions.

## 2. Review and Processing of Applications, Time Limits, and Remedies

81. Section 6409(a)(1) provides that notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. The Commission asks for comments on the extent to which the statutory language leaves State or local governments discretion or authority to deny or condition approval and what restrictions or requirements, if any, it may place on the processes that a State or locality may adopt for the review of applications. The Commission further seeks comment on whether section 6409(a) warrants establishment of time limits for State and local review and prescription of remedies in the event of a failure to approve a covered request under section 6409(a)(1).

82. *May not deny and shall approve.* The Commission seeks comment on whether, by directing that States and localities may not deny and shall approve covered requests, section 6409(a) requires States and localities to approve all requests that meet the definition of eligible facilities requests and do not result in a substantial change in the dimensions of the facility, without exception and/or discretionary review. The Commission also seeks comment on whether there are any special circumstances under which, notwithstanding this unqualified language, section 6409(a) would permit a State or local government to deny an otherwise covered request. The Commission further seeks comment on whether States and localities may make the grant of a covered request subject to conditions on or alterations to the request. If so, what types of conditions or alterations may they require that would be consistent with section 6409(a)? In particular, the Commission

seeks comment below on whether and/or to what extent States and localities may require any covered requests to comply with State or local building codes and land use laws and whether States and localities are required to approve an otherwise covered modification of a tower or base station that has legal, non-conforming status or that does not conform to a condition or restriction that the State or locality imposed as a prerequisite to its original approval of the tower or base station. The Commission also proposes below to find that the requirement that States and localities may not deny and shall approve covered requests in any case applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their capacities as property owners.

83. The Commission seeks comment whether and/or to what extent States and localities may require any covered requests to comply with State or local building codes and land use laws. For example, the Commission seeks comment on whether a State or local government must grant a facilities modification request that would result in an increase in height above the maximum height permitted by an applicable zoning ordinance. May States and localities require a covered request to be in compliance with general building codes or other laws reasonably related to health and safety? For example, the Commission seeks comment on whether States or localities can continue to enforce restrictions such as load-bearing limits on applications that otherwise meet the standard for approval under section 6409(a)(1). May they condition the approval of a modification on the underlying structure's compliance with the hardening standards under TIA-222 revision G, Structural Standards for Antenna Supporting Structures and Antennas? What is the cost of bringing a structure into compliance with these standards? Similarly, may a State or local government deny an application for an otherwise covered modification if the structure, as modified, would not meet the fall zone or setback distance that its ordinance requires? The Commission further seeks comment on the enforceability of codes that may not be designed for current technologies, e.g., codes establishing set-back minimums appropriate for towers but excessive for much shorter utility poles. The Commission asks commenters to discuss the extent to which principles of federalism require or permit the Commission to construe section 6409(a)

in a manner that preserves traditional State or local land use authority with respect to any of these issues.

84. The Commission also seeks comment on whether section 6409(a) is applicable to eligible facilities requests involving existing towers or base stations that were approved at the time of construction but that are no longer in conformance due to subsequent changes to the governing zoning ordinance. Some jurisdictions routinely deny such requests, while others require full zoning review and impose conditions such as replacement or retrofitting of the underlying structure. The Commission therefore seeks comment on whether States and localities are required to approve an otherwise covered modification of a tower or base station that has legal, non-conforming status, and whether section 6409(a) disallows a jurisdiction from subjecting such a request to full zoning review. The Commission further seeks comment on current municipal practices regarding modification or collocation requests in connection with legal, non-conforming wireless towers. What are the reasons or justifications for the local jurisdiction to require a full zoning review? What is the common time frame to process a local zoning review for a request to modify a legal, non-conforming tower? What sorts of conditions have local governments placed on their approval?

85. The Commission also seeks comment on whether States and localities are required to approve a modification of an existing tower or base station that does not conform to a condition or restriction that the State or locality imposed as a prerequisite to its original approval of the tower or base station. For example, if a municipality has approved initial installation of some transmission facilities on a building or other structure conditioned on the facilities meeting standards with regard to height, width, bulk, appearance, or other design characteristics intended to camouflage the deployment, is it required to approve subsequent collocations on the structure that do not meet those stealth conditions? Should a different rule apply depending on whether the condition was imposed before or after the effective date of section 6409(a)? The Commission seeks comment on whether interpreting the statute to require approval of modifications notwithstanding conditions on the original installation may create disincentives for States and localities to approve the initial siting of towers or base stations, and if so, how section 6409(a) can be implemented to address this concern.

86. More broadly, the Commission seeks comment on the extent to which any of these asserted grounds for local substantive review and potential denial of an application should alternatively be understood as factors in determining whether a wireless tower or base station should be considered existing or what constitutes a substantial change in the physical dimensions of a wireless tower or base station. For example, should modifications that alter a facility in a fashion inconsistent with local ordinance or with conditions on the structure's use be considered to substantially change its physical dimensions? Should a tower that is legal but non-conforming not be considered existing for purposes of section 6409(a)?

87. The IAC argues that the mandate that States and localities may not deny and shall approve requests applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their capacities as property owners. The IAC asserts, as example, that where a county government, as landlord rather than as land use regulator, has by contract or lease chosen, in its discretion, to authorize the installation of an antenna on a county courthouse rooftop of certain exact dimensions and specifications, section 6409 does not require the county, acting in its capacity as landlord rather than its capacity as regulator of private land use, to allow the tenant to exceed to any extent those mutually and contractually agreed-upon exact dimensions and specifications. The Commission proposes to adopt this interpretation of section 6409(a) and seeks comment, including comment on how to ensure it is clear in which capacity governmental action is requested and in which capacity a governmental entity is acting, and whether the Commission needs to address how section 6409(a) applies to requests seeking a government's approval in both capacities. For example, would section 6409(a) impose no limits on such a landlord's ability to refuse or delay action on a collocation request?

88. *Application procedures.* The Commission seeks comment on whether section 6409(a) places restrictions, limitations, or requirements on the filing and review process applicable to applications subject to section 6409(a), and if so, what Federal standards would appropriately implement such limitations. Some have suggested that because section 6409(a) provides that State and local governments shall approve covered facilities requests, the provision requires an expedited process. Other parties, on the other hand, have

argued that a fact-finding is required to determine whether section 6409(a) applies at all and that local governments need the freedom to adopt procedures that will enable them to resolve this question. In the *Section 6409(a) PN*, the bureau, noting that the provision on its face contemplates the submission of a request, indicated that the relevant government entity may still require the filing of an application for administrative approval. The *Section 6409(a) PN* did not provide any further procedural guidance.

89. The Commission proposes to find, consistent with the bureau guidance, that section 6409(a) permits a State or local government at a minimum to require an application to be filed and to determine whether the application constitutes a covered request. This is consistent with the statutory language providing that the government shall approve the application. The Commission seeks comment on this proposed finding. The Commission further seeks comment on whether, given the directive that the State or local government shall approve, section 6409(a) permits and warrants Federal limits on applicable fees, processes, or time for review. If so, should the Commission define what these limits are, or are the variations in circumstances such that it is better to address them case-by-case? If the Commission does define them, what should the limits be? For example, should the Commission find that section 6409(a) warrants specific expedited procedures or limits on the documentation that may be required with an application?

90. In particular, the Commission seeks comment on whether section 6409(a) warrants limiting the procedures for filing and reviewing an application that the applicant characterizes as stating a covered request to those procedures relevant to resolving whether the request is in fact covered by section 6409(a). The Commission further seeks comment on whether section 6409(a) permits limitations on which officials may review an application, and if so, whether such limitations are warranted. For example, to the extent that review under section 6409(a) is ministerial, approval by administrative staff may be more efficient, and no less effective, than submission to an elected Board. Would a Federal standard requiring State and local governments to utilize such an administrative process sufficiently protect their ability to identify applications that are not covered by section 6409(a) and otherwise to exercise any permitted

discretion? Would it be consistent with principles of federalism to constrain State and local government procedures in this manner, as a condition for continuing to review covered requests? Would such a standard contradict some local ordinances and, if so, would it raise concerns that, at least for an interim period, the affected community could not review applications at all? Are administrative practices sufficiently uniform among communities that any rules could be meaningful?

91. The Commission also seeks comment on whether section 6409(a) permits or warrants imposing limits on the kinds of information and documentation that may be required in connection with an application asserted to be a covered request. The Commission notes that, in the *NOI* proceeding, some parties asserted that some jurisdictions were requesting extensive documentation for collocation approvals, thereby resulting in delay, while other jurisdictions required only the limited information necessary to issue a common building permit. The Commission also notes that, since the *NOI* was released, additional States have taken steps to streamline local processing of collocation requests, in part through clarifying what information may be required to support such requests. The Commission seeks comment on such developments and on whether, given current practices, it is now necessary or appropriate to establish Federal standards governing the information that applicants may be required to provide in connection with an asserted section 6409(a) request in order to ensure that such information requests do not unnecessarily extend the application process. For example, should the Commission clarify that States and localities may not require information or documents in connection with an eligible facilities request asserted to be a covered request under section 6409(a) that are not relevant to the criteria for approval under section 6409(a)?

92. The Commission also seeks comment on whether to establish a time limit for the processing of requests under section 6409(a). In the *Section 6409(a) PN*, the bureau noted that the *2009 Declaratory Ruling* established 90 days as a presumptively reasonable period of time to process collocation applications under section 332(c)(7). The bureau stated that 90 days should be the maximum presumptively reasonable period of time for reviewing requests that are covered by section 6409(a), whether for personal wireless services or other wireless facilities. The Commission seeks comment on whether

to adopt this conclusion or adopt a shorter period, given that section 6409(a) considerably narrows the scope of review. Should the Commission also consider specific circumstances under which municipalities may extend the time period? For example, consistent with the Commission's interpretation of section 332(c)(7), should the Commission provide that a municipality may toll the running of the period if it notifies the applicant in writing within 30 days that an application is incomplete and specifies the additional information or documentation required to complete the application? Does section 6409(a) warrant imposing any limits on the ability of a municipality to require such additional information or documentation? Should municipalities be able to extend the time period by agreement with the applicant?

93. The Commission notes that some jurisdictions have adopted moratoria on the filing or processing of applications for new wireless facilities, including collocations and other modifications that may be covered under section 6409(a). The Commission seeks comment on current developments of this kind, and how they may relate to covered requests under section 6409(a). Considering Congress's explicit language that a State or local government may not deny, and shall approve a covered application, the Commission proposes to preempt the application of any such moratoria to covered requests under section 6409(a), including with respect to the running of any applicable time period. In other words, under this proposal, a State or local government may not prevent or delay the filing of applications asserted to be covered by section 6409(a) due to a moratorium, and it must approve covered applications within the same time period as if no moratorium were in effect. The Commission seeks comment on this proposal. Alternatively, the Commission seeks comment on whether it should specify a maximum cumulative time that may be added to the process due to moratoria and, if so, what that time period should be, as well as whether any tolling should be limited to moratoria that are put in place prior to submission of the application or request.

94. The Commission anticipates that in general, review of applications submitted under section 6409(a) will be limited to determining whether the application states an eligible facilities request, whether the request would substantially change the physical dimensions of the relevant tower or base station, and whether it satisfies any other criteria that, under interpretations

the Commission may adopt in this proceeding, allow the State or local government to deny or condition an otherwise covered application. Should the Commission distinguish any set of applications that are unlikely to raise any significant questions of eligibility and therefore should be subject to more stringent limitations on process, timing, or fees? If so, what criteria should identify these applications and what limits are appropriate under section 6409(a)? For example, should requests for removal of transmission equipment be eligible for a more expedited process than new collocations? Should replacement applications also be subject to a more expedited process and, if so, subject to what limitations on the size or appearance of the new equipment?

95. *Remedy and enforcement.* The Commission seeks comment on what remedies should be available to enforce section 6409(a) in cases of failure to act or decisions adverse to the applicant. The Commission first seeks comment on whether it should provide that a covered request is deemed granted by operation of law if a State or local government fails to act within a specified period of time. In the *2009 Declaratory Ruling*, the Commission declined to adopt such a deemed granted remedy for local government failures to act on facilities siting applications under section 332(c)(7)(B), finding that section 332(c)(7)(B)(v) indicated a Congressional intent that courts should have the responsibility to fashion appropriate case-specific remedies. Unlike section 332(c)(7), however, section 6409(a) does not explicitly include a judicial remedy. Indeed, whereas the terms of section 332(c)(7) do not mandate approval of any particular request, section 6409(a) provides that governments shall approve requests covered by the provision. Moreover, section 6409(a) compels such action notwithstanding section 332(c)(7) in particular. The Commission seeks comment on whether this statutory distinction supports a deemed granted remedy for applications subject to section 6409(a).

96. The Commission also seeks comment on whether such a remedy raises any constitutional concerns, including concerns under the Tenth Amendment. While the adoption of a deemed granted rule for cases of State inaction would result in the grant of facilities siting applications by operation of Federal law pursuant to section 6409(a), such a rule would not appear to compel the States to enact or administer a Federal regulatory program. Indeed, rather than drawing the States into such involvement, the

rule would simply end the application process without a need for any State or local action at all, since a deemed granted approach would operate automatically to grant the application when the trigger event occurs (e.g., inaction on the application for the amount of time specified by the rule). Moreover, other than establishing the automatic grant, a deemed granted rule would not prescribe any particular processes or place any obligations on State or local governments, thereby leaving their regulatory authority over the siting matter otherwise undisturbed. In these respects, it would appear that a deemed granted rule would no more constitute a Federal regulatory program imposed on the States than would a pure preemption of State action.

97. In addition to the deemed granted approach, the Commission also seeks comment on any alternative remedies to similarly ensure that cases of State inaction or inordinate delay are addressed as Congress intended. Should the Commission, for example, exercise authority under *City of New York* to preempt State or local authority with respect to covered requests that have been pending for more than a specified period of time? Would such preemption effectively serve the goals of section 6409(a) by precluding State or local legal action against installations that meet the terms of section 6409(a)? Would this type of remedy effectively enable the installation to proceed, or would the preemption of the State/local application process prior to its normal conclusion create other potential impediments? For example, if the State or local body typically issues a permit after granting a siting application, would the lack of a permit affect the wireless carrier's ability to hire contractors to perform necessary work for the installation? While a similar problem is conceivable with the deemed granted approach, a carrier that receives a grant by operation of Federal law under section 6409(a) should have recourse through established legal frameworks to obtain any necessary paperwork and credentials to which those receiving a grant from the State or local government are entitled. The Commission seeks comment on this aspect of the deemed granted approach, as well as on any other practical problems that may arise.

98. The Commission also seeks comment on the appropriate remedy when a State or local government impermissibly denies a covered request. Should such a denial also be subject to a deemed granted remedy? How feasible would this approach be when the ostensible reason for the denial is that

the request does not qualify as a covered request? Could such denials be excluded from the deemed granted approach without rendering the approach ineffective for addressing impermissible denials of covered requests? Is there any other reason to treat a State or local government's denial of an eligible facilities request differently from its failure to act within a specified period of time?

99. The Commission further seeks comment on how a deemed granted remedy, if adopted, should operate, when it should be applicable, and how it should be enforced under section 6409(a). For example, should an applicant be required to notify a State or local government when it believes that a deemed grant has occurred, thus providing that State or local government the opportunity to go to court or the Commission to seek a finding that the deemed granted remedy has not been triggered? Or should the onus be placed on the applicant to go to court or the Commission and asks for a finding that an application is a covered request before it can be deemed granted? Would placing the burden on the applicant pursuant to the latter option negate many of the benefits of having a deemed granted remedy?

100. For the reasons discussed above, the Commission proposes to permit the filing of complaints with the Commission alleging violations of section 6409(a) along with any implementing rules the Commission choose to adopt, and that such complaints be filed as petitions for declaratory ruling. The Commission seeks comment on these proposals, including whether it should adopt other procedures, such as those that have been adopted in connection with other local land use actions that affect Commission licensees. What alternative judicial remedies would a party have? The Commission also notes that some zoning regulations require that only a court decision can overturn a zoning decision. The Commission seeks comment on whether and how section 6409(a) might operate to preempt such requirements and how this issue should affect the remedies the Commission provides.

101. Finally, the Commission seeks comment on the relation between section 6409(a) and section 332(c)(7). While the provisions are not coextensive, many collocation applications under section 6409(a) are also covered under section 332(c)(7). Where both sections apply, the Commission proposes to find that section 6409(a) governs, consistent with canons of statutory construction that a

more recent statute takes precedence over an earlier one and that normally the specific governs the general. Thus, under this interpretation, because the substantive standard requiring approval of covered requests under section 6409(a) appears to provide significantly less leeway than section 337(c)(7) and is therefore in conflict with the latter provision, where both apply, such covered requests would be governed by the substantive standard of section 6409(a). The Commission seeks comment on this proposed finding and any alternatives.

#### V. Implementation of Section 332(C)(7)

102. The Commission does not intend in this NPRM to seek comment on or otherwise revisit any aspect of its *2009 Declaratory Ruling*. As discussed below, the Commission has received various comments in response to the *NOI* asserting that it is unclear how the standards established in the *2009 Declaratory Ruling* apply in certain specifically identified contexts or seeking clarification regarding questions arising under section 332(c)(7) that were not addressed by the *2009 Declaratory Ruling*. Additionally, the Commission has been asked to revisit its decision not to impose a deemed granted remedy in cases where a State or local government fails to comply with the time limits set forth in the *2009 Declaratory Ruling*. From these comments, the Commission has distilled six discrete issues that have been raised. While taking the opportunity to address these issues, the Commission stresses that it is not revisiting—or seeking comment in this proceeding on—any of the matters decided by the *2009 Declaratory Ruling*.

103. *Definition of collocation.* In the *2009 Declaratory Ruling*, the Commission held that the addition of an antenna to an existing tower or other structure constitutes a collocation for purposes of section 332(c)(7) if it does not involve a substantial increase in the size of a tower as defined in the Collocation Agreement. However, the Commission did not further define that term. In the context of defining a substantial change in physical dimensions under section 6409(a), the Commission seeks comment above on whether to adopt a different standard depending on the type of structure to be modified. The Commission similarly seeks comment here on whether to refine the substantial increase in size test as applied to collocations on structures other than communications towers under section 332(c)(7). Should the Commission apply the test for substantial increase in size under section 332(c)(7) in the same manner as

it interprets the test under section 6409(a) for substantial change in physical dimensions? The Commission also seeks comment on whether terms that it defines under both section 332(c)(7) and section 6409(a), such as collocation, should be defined in the same way.

104. *Completeness of applications.* Although the *2009 Declaratory Ruling* held that a State or local government's period for acting on an application is tolled until the applicant completes its application in response to a request for additional information made within the first 30 days, it did not attempt to define when a siting application should be considered complete for this purpose. PCIA has asserted that, as a result, jurisdictions may delay processing by repeatedly requesting additional information. AT&T also asserted that some local authorities have tried to extend their period for decision by delaying when they deem the application complete. The Commission seeks comment on whether to clarify when a siting application is considered complete for the purpose of triggering the *2009 Declaratory Ruling* time frame and, if so, how that should be determined.

105. *Local moratoria.* Above, the Commission seeks comment on whether and how the requirements of section 6409(a) apply to delays in processing applications that result from local moratoria. Here, the Commission similarly seeks comment on whether and how the presumptively reasonable time frames under section 332(c)(7) apply to such delays. PCIA in its comments to the *NOI* argued that because the *2009 Declaratory Ruling* on timelines for application review did not explicitly discuss moratoria, many jurisdictions have enacted them in an effort to avoid the *2009 Declaratory Ruling* time frames altogether. PCIA asserted that siting moratoria lasting longer than six months are generally contrary to the industry-community agreement signed in 1998, and that local jurisdictions have not followed this agreement and have enacted moratoria extending well beyond the six-month time period. Thus, PCIA requested that the Commission clarify the applicability of the *2009 Declaratory Ruling* to local moratoria.

106. The Commission proposes to find that the presumptively reasonable period for State or local government action on an application runs regardless of any local moratorium. Since the *2009 Declaratory Ruling* makes no special provision for moratoria, the Commission believes this is consistent with the plain reading of that decision. Furthermore,

the Commission believes this approach creates an appropriate bright-line test for when a State or local government's delay may be brought before a court. Under this reading, the reasonableness of the moratorium may be considered by a reviewing court in determining whether the delay violates section 332(c)(7). The Commission seeks comment on this proposal and analysis.

107. Alternatively, the Commission seeks comment on whether the running of the applicable presumptively reasonable period of time should be tolled by a moratorium. The Commission also seeks comment on whether, if it adopts this ruling, the tolling period for moratoria should be limited to a maximum cumulative time, what that time period should be, and whether tolling should be limited to moratoria that are put in place prior to the submission of the application or request. The Commission further seeks comment on how frequently moratoria are invoked, the typical duration of moratoria, and the local interests served by or justifications for such moratoria. The Commission notes that if it holds that the section 6409(a) substantive standards govern applications covered by both section 6409(a) and section 332(c)(7), such standards would include any decisions on moratoria under section 6409(a). The Commission seeks comment on whether treatment of moratoria should be similar under the two provisions.

108. *Application to DAS.* The *NOI* record has shown that in the absence of any explicit discussion, some jurisdictions have interpreted the *2009 Declaratory Ruling* time frames as not applying to DAS deployments. Neither section 332(c)(7) nor any Commission decision interpreting section 332(c)(7) makes any distinction among personal wireless service facilities based on technology, and absent a compelling reason to do so, the Commission is not inclined to make such distinctions. In any event, the Commission proposes to clarify that to the extent DAS or small cell facilities, including third-party facilities such as neutral host DAS deployments, are or will be used for the provision of personal wireless services, such facilities are subject to the same presumptively reasonable time frames and other requirements as other personal wireless service facilities.

109. The City of Philadelphia responded to the *NOI* record on this issue, arguing that a number of factors, including the possibility that a DAS network may include a large number of discrete sites, the density of the sites, and their tendency to have a large presence in the public rights-of-way,

dictate a substantially greater time to review and evaluate permitting applications than for traditional cell site applications, making the time frames provided in the *2009 Declaratory Ruling* inappropriate. The *2009 Declaratory Ruling* does not prevent a court from taking these factors into consideration in any determination of reasonableness, however, and applicants and municipalities can agree to extensions of time in appropriate cases. The Commission seeks comment on its proposal and analysis, including any reason DAS or small cell facilities should be subject to different time frames or other requirements.

110. *Section 332(c)(7)(B)(i)(I)*. PCIA has asserted that some local ordinances establish preferences for placing wireless facilities on municipal property and argued that, by limiting the siting flexibility of subsequent wireless entrants in a given area, such ordinances unreasonably discriminate among providers of functionally equivalent services in violation of section 332(c)(7)(B)(i)(I). Other commenters have argued against such a *per se* conclusion. The Commission seeks comment on whether ordinances establishing preferences for the placement of wireless facilities on municipal property are unreasonably discriminatory under section 332(c)(7).

111. *Deemed Granted Remedy*. In the *2009 Declaratory Ruling*, the Commission declined to establish a deemed granted remedy in cases where a State or local government failed to abide by the time limits established by the Commission. It noted at the time that section 332(c)(7)(B)(v) states that when a failure to act has occurred, aggrieved parties should file with a court of competent jurisdiction within 30 days and that the court shall hear and decide such action on an expedited basis. The Commission then concluded that this provision indicates Congressional intent that courts should have the responsibility to fashion appropriate case-specific remedies.

112. PCIA in its comments asks the Commission to revisit this decision and adopt a deemed granted remedy. Specifically, it claims that adding a deemed granted rule is critical to ensuring that States and localities act within the prescribed timelines. PCIA notes that seeking judicial relief for violations of section 332(c)(7) can involve great time and expense and that a deemed granted remedy would reduce costly and time-consuming litigation, allowing those resources to be used to fund rather than defend the expansion of broadband deployment. What experiences have parties had since the

end of the comment period for the *NOI* in WC Docket No. 11–59? Should the Commission adopt remedies beyond the one provided in the *2009 Declaratory Ruling* for violations of section 332(c)(7)? If so, what should they be? What authority does the Commission have to adopt the proposed remedy?

## VI. Other Procedural Matters

### A. Initial Regulatory Flexibility Analysis

113. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this NPRM and, if submitted together with comments to the NPRM in a single filing, must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

114. In this NPRM, the Commission addresses four major issues regarding the regulation of wireless facility siting and construction with the goal of reducing, where appropriate, the cost and delay associated with the deployment of such infrastructure. First, the Commission seeks comment on expediting its environmental review, including review under section 106 of the NHPA, in connection with proposed deployments of small cells, Distributed Antenna Systems (DAS), and other small wireless technologies that may have minimal effects on the environment. While the Commission has acted in the past to tailor its environmental review for the deployment of wireless infrastructure, those processes were largely developed long before small cell technologies became prevalent, and for the most part reflect the scale and level of environmental concern presented by traditional deployments on tall structures. Accordingly, the Commission seeks comment on whether to further tailor its environmental review process for technologies such as

DAS and small cells through adoption of a categorical exclusion or other means. Second, the Commission proposes to adopt a narrow exemption from the Commission's pre-construction environmental notification requirements for certain temporary towers. These notification requirements provide that, before a party can register a proposed communications tower that requires registration under part 17 of its rules, and thus begin to construct or deploy the tower in question, it must complete a process of local and national notice. The proposed exemption will ensure that providers can timely deploy temporary facilities in response to unanticipated short term needs for broadband and other wireless services, such as in response to newsworthy events that occur without prior notice. Third, the Commission seeks comment on proposed rules to clarify and implement the requirements of section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act), which streamlines State and local review of requests for modification of existing towers and base stations to facilitate the deployment of the nationwide public safety broadband network mandated by the Spectrum Act and help providers meet the Nation's growing demand for wireless broadband and other advanced services. Finally, the Commission seeks comment on certain issues arising from section 332(c)(7) of the Communications Act and the Commission's interpretations in the *2009 Declaratory Ruling* of that provision, in order to provide greater notice and clarity to affected stakeholders.

#### 2. Legal Basis

115. The authority for the actions taken in this NPRM is contained in sections 1, 2, 4(i), 7, 201, 301, 303, 309, 332, 1403, and 1455 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 303, 309, 332, 1403, and 1455, section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(C), and section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f.

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

116. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term small entity as having the same

meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, the Commission provides a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

117. The NPRM proposes rule changes regarding local and Federal regulation of the siting and deployment of communications towers and other wireless facilities. Due to the number and diversity of owners of such infrastructure and other responsible parties, including small entities that are Commission licensees as well as non-licensees, the Commission classifies and quantifies them in the remainder of this section. The Commission seeks comment on its description and estimate of the number of small entities that may be affected.

118. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission's action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration. As of 2010, there were 27.9 million small businesses in the United States, according to the SBA. Additionally, a small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term small governmental jurisdiction is defined generally as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as small governmental jurisdictions. Thus, the Commission estimates that most governmental jurisdictions are small.

119. *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 phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 99 or fewer employees and 372 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by its proposed action. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

120. *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. The Personal Radio Services include spectrum licensed under part 95 of its rules. These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS). There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, the Commission applies

the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons. Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by its proposed actions.

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

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

123. Similarly, according to Commission data, 413 carriers reported

that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

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

125. *Multiple Address Systems.* Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines small entity for MAS licensees as an entity that has average gross revenues of less than \$15 million in the three previous calendar years. Very small business is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years. The SBA has approved of these definitions. The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 EA market area MAS authorizations. The Commission's licensing database indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service.

126. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an

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

127. *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)). In connection with the 1996 BRS auction, the Commission established a small business size standard as designating an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the

number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA's or the Commission's rules.

128. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (1) 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; (2) 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 (3) 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.

129. *Location and Monitoring Service (LMS).* Multilateration 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.

130. *Television Broadcasting.* The SBA defines a television broadcasting station that has no more than \$35.5 million in annual receipts as a small business. Business concerns included in this industry are those primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. 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 the station's own studio, from an affiliated network, or from an external source.

131. According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of March 31, 2013, about 90 percent of an estimated 1,385 commercial television stations in the United States have revenues of \$35.5 million or less. Based on this data and the associated size standard, the Commission concludes that the majority of such establishments are small. The Commission has estimated the number of licensed noncommercial educational (NCE) stations to be 396. The Commission does not have revenue estimates for NCE stations. These stations rely primarily on grants and contributions for their operations, so the Commission will assume that all of these entities qualify as small businesses. In addition, there are approximately 567 licensed Class A stations, 2,227 licensed low power television (LPTV) stations, and 4,518 licensed TV translators. Given the nature of these services, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

132. The Commission notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Its estimate, therefore, likely overstates the number of small entities affected by the proposed rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

133. In addition, an element of the definition of small business is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of small business is that the entity must be independently owned and operated. 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.

134. *Radio Broadcasting.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in the station's own studio, from an affiliated network, or from an external source. The SBA defines a radio broadcasting entity that has \$35.5 million or less in annual receipts as a small business. According to Commission staff review of the BIA Kelsey Inc. Media Access Radio Analyzer Database as of June 5, 2013, about 90 percent of the 11,340 of commercial radio stations in the United States have revenues of \$35.5 million or less. Therefore, the majority of such entities are small entities. The Commission has estimated the number of licensed noncommercial radio stations to be 3,917. The Commission does not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so the Commission will assume that all of these entities qualify as small businesses. The Commission notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. In addition, to be determined to be a small business, the entity may not be dominant in its field of operation. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and its estimate of small businesses may therefore be over-inclusive.

135. *FM translator stations and low power FM stations.* The proposed rules and policies could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than \$35.5 million in annual receipts. Currently, there are approximately 6,155 licensed FM translator and booster stations and 864 licensed LPFM stations. Given the nature of these services, the Commission will presume that all of these licensees qualify as small entities under the SBA definition.

136. *Multichannel Video Distribution and Data Service.* 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.

137. *Satellite Telecommunications.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$30 million or less in average annual receipts, under SBA rules. The second has a size standard of \$30 million or less in annual receipts.

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

139. The second category, i.e., All Other Telecommunications, comprises establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over

Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. For this category, Census data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year. Of those 2,639 establishments, 2,333 operated with annual receipts of less than \$10 million and 306 with annual receipts of \$10 million or more. Consequently, the Commission estimates that a majority of All Other Telecommunications establishments are small entities that might be affected by its action.

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

141. As of June 28, 2013, there are approximately 113,612 registration records in a 'Constructed' status and 13,572 registration records in a 'Granted, Not Constructed' status in the ASR database. This includes both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which the Commission can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require antenna structure registration, the Commission does not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners who would be subject to the proposed rules. 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 individuals owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands, and that nearly all of these qualify as small businesses under the SBA's definition for All Other Telecommunications. In addition, there may be other non-licensee owners of other wireless infrastructure, including DAS and small cells, that might be affected by the regulatory measures proposed in this NPRM. The Commission does not have any basis for estimating the number of such non-licensee owners that are small entities.

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

142. The NPRM proposes an exemption from the environmental notification process that, if adopted, may require amending a current information collection. Under the environmental notification rules, prior to filing a completed Antenna Structure Registration (ASR) application for any new antenna structure or for certain categories of antenna structure modifications or replacements, the ASR applicant must initially submit into the ASR system a partially completed FCC Form 854 that includes information about the proposed antenna structure but is not yet complete for filing. The applicant must also provide local notice of its proposed tower through publication in a local newspaper or other appropriate means, such as by following the local zoning public notice process. The Commission then posts information about the proposal on its Web site for thirty days, relying on information submitted by the applicant. Applicants claiming either a waiver from the notification process or entitlement to a defined exemption from the notification process must so indicate on their Form 854 submission.

143. This NPRM proposes to adopt a new limited exemption from the environmental notification requirements. This exemption would apply to temporary antenna structures that, because of their characteristics, do not have the potential for significant environmental effects. For these antenna structures, the NPRM proposes to find that the risk that carriers will not be able to meet short-term capacity needs if required to complete the notification process outweighs the small likelihood that the process will confer any benefit. The NPRM further seeks comment on

the specific criteria for such an exemption, and whether it is sufficient for exemption if an antenna structure (1) will be in use for 60 days or less, (2) requires notice of construction to the Federal Aviation Administration (FAA), (3) does not require marking or lighting pursuant to FAA regulations, (4) will be less than 200 feet in height, and (5) will involve minimal or no excavation. Should such an exemption be adopted, applicants would be required to indicate on their Form 854 filing that they are claiming the notification exemption for new towers and to demonstrate that they satisfy any applicable criteria.

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

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

145. In this proceeding, the Commission seeks to encourage and promote the deployment of advanced wireless broadband and other services by tailoring or streamlining the regulatory review of new wireless network infrastructure consistent with the law and the public interest. The Commission therefore anticipates that the steps it proposes or on which it seeks comment will not impose any significant economic impacts on small entities, and will in fact help reduce burdens on small entities that may need to deploy wireless infrastructure by reducing the cost and delay associated with the deployment of such infrastructure. As discussed below, however, certain proposals may impose regulatory compliance costs on small jurisdictions.

146. The NPRM seeks comment in four major areas relating to the regulation of wireless facility siting and construction. First, it seeks comment on whether and by what measures the Commission should expedite environmental review under the National Environmental Policy Act of 1969 and section 106 of the National Historic Preservation Act of 1966 for DAS and small cell deployments and

other new wireless network technologies involving the deployment of small facilities that may have minimal potential for significant environmental effects. The proposed measures should reduce existing regulatory costs for small entities that construct or deploy wireless infrastructure, and will not impose any additional costs on such entities. The Commission seeks comment on the economic impact of these clarifications and exclusions on small entities and invite commenters addressing these options to discuss alternatives that could further lessen the burden on small businesses and reduce unnecessary costs and delays associated with the deployment of wireless network infrastructure, without risking significant environmental impact.

147. In particular, the NPRM proposes to amend the first sentence of Note 1 to § 1.1306 of the Commission's rules to clarify that the existing NEPA exclusion for collocations of antennas on an existing building or antenna tower also applies to collocations on other structures, including the types of short structures upon which DAS and small facilities may be collocated. This change would clarify that small entities proposing to collocate wireless equipment on structures such as poles or water towers would be entitled to the same relief from the requirement to prepare an Environmental Assessment (EA) that they receive under Note 1 to § 1.1306 when collocating on buildings and antenna towers. The NPRM also seeks comment on whether to further amend the first sentence of Note 1 to § 1.1306 to clarify that the collocation exclusion applies to collocations of equipment inside buildings as well as to equipment attached externally, and whether to provide expressly that the exclusion for antennas also applies to associated equipment. This change would clarify that entities, including small entities, proposing to place wireless equipment inside buildings or on structures such as poles or water towers would be entitled to the same relief from the requirement to prepare an EA that they receive under Note 1 to § 1.1306 when collocating on the outside of buildings.

148. The NPRM further seeks comment on whether to adopt new categorical exclusions from NEPA and section 106 review for DAS and small cells and on how such exclusions should be defined to encompass other wireless technologies that similarly involve deployment of small facilities and therefore warrant similar treatment for purposes of NEPA and section 106 review. These new exclusions would

reduce environmental compliance costs of small entities by providing that eligible proposed deployments of small wireless facilities do not require the preparation of an EA.

149. Second, the NPRM proposes to adopt an exemption from the pre-construction environmental notification process for certain temporary towers that have characteristics (very short duration, height limits, minimal or no excavation, and no lighting) that minimize their potential to cause significant environmental effects, and seeks comment specifically on an exemption for antenna structures that (1) will be in use for 60 days or less, (2) require notice of construction to the FAA, (3) do not require marking or lighting pursuant to FAA regulations, (4) will be less than 200 feet in height, and (5) will involve minimal or no excavation. The NPRM tentatively concludes that this exemption will serve the public interest by reducing the burden on broadband and other wireless service providers, including small entities. The Commission seeks comment on the economic impact of this proposal on small entities, and any alternative approaches that may further reduce the burden on such entities.

150. Third, the NPRM seeks comment on rules interpreting and implementing section 6409(a) of the Spectrum Act, which governs State and local review of eligible requests for modification of existing wireless towers or base stations, including requests for collocation. In particular, it seeks comment on the interpretation of various statutory terms, on time limits for the review of applications covered by section 6409(a), and other issues relevant to how State or local governments process and review applications under the provision. In considering what interpretations to adopt from among potential alternatives, the Commission will give full consideration to the effects on small entities, including small governmental jurisdictions, and will not adopt an interpretation that significantly burdens small entities unless necessary to effectuate the intent of the statute. The Commission invites commenters to discuss the economic impact on small entities of the interpretations of section 6409(a) on which the Commission seeks comment and to suggest alternatives that may reduce the impact on small entities while achieving the goals of the Commission and the provision. For example, the NPRM seeks comment on how the Commission might encourage efforts to develop best practices for applying section 6409(a), and on whether the Commission should provide a transition period to allow

States and localities to implement the requirements of section 6409(a) in their laws, ordinances, and procedures, without risking significant delay in implementation of the provision.

151. Finally, the NPRM seeks comment on whether to clarify certain aspects of the Commission's interpretations of section 332(c)(7) in the *2009 Declaratory Ruling*. In particular, it seeks comment on whether to clarify when a siting application is considered complete, how the presumptive time frames apply in the context of local moratoria, whether to refine the substantial increase in size test as applied to collocations on structures other than communications towers under section 332(c)(7), how the decisions in the *2009 Declaratory Ruling* apply to deployments of DAS and small cell facilities, and whether the Commission should adopt remedies beyond those provided in the *2009 Declaratory Ruling*. The NPRM also seeks comment on whether ordinances establishing preferences for municipal property sitings violate section 332(c)(7)(B)(i)(I). The Commission invites commenters to discuss the economic impact of any clarification of those rulings on small entities, including small jurisdictions, and on any alternatives that would reduce the economic impact on such entities.

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

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

153. None.

### B. Initial Paperwork Reduction Act Analysis

154. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,

Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

### C. Ex Parte Rules—Permit-but-Disclose

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

### VII. Ordering Clauses

156. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 7, 201, 301, 303, 309, 332, 1403, and 1455 of the Communications Act of 1934, as amended 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 303, 309, 332, 1403, and 1455,

section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(C), and section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, that this Notice of Proposed Rulemaking *is hereby adopted*.

157. *It is further ordered* that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before February 3, 2014 and reply comments on or before March 5, 2014.

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

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

For the reasons stated in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 17 as follows:

### PART 1—PRACTICE AND PROCEDURE

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

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

■ 2. Amend § 1.1306 by

■ a. Revising NOTE 1; and

■ b. Redesignating NOTES 2 and 3 as "NOTE 2 to § 1.1306" and "NOTE 3 to § 1.1306" respectively.

The revision reads as follows:

#### § 1.1306 Actions which are categorically excluded from environmental processing.

\* \* \* \* \*

**NOTE 1 to § 1.1306:** The provisions of § 1.1307(a) of this part requiring the preparation of EAs do not encompass the mounting of antenna(s) and associated equipment on an existing building, antenna tower, or other structure, or inside an existing building or other structure, unless § 1.1307(a)(4) of this part is applicable. Such antennas and associated equipment are subject to § 1.1307(b) of this part and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in § 1.1307(b) of this part. The provisions of §§ 1.1307 (a) and (b) of this part do not encompass the installation of aerial wire or cable over existing aerial corridors of prior or permitted use or the underground installation of wire or cable

along existing underground corridors of prior or permitted use, established by the applicant or others. The use of existing buildings, towers or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged. The provisions of §§ 1.1307(a) and (b) of this part do not encompass the construction of new submarine cable systems.

\* \* \* \* \*

■ 3. Add Subpart CC to part 1 read as follows:

### Subpart CC—State and Local Review of Applications to Site Wireless Facilities

Sec.

1.40001 *Wireless Facility Modifications.*

#### § 1.40001 Wireless Facility Modifications.

(a) *Purpose.* These rules are issued under the Communications Act of 1934, as amended, 47 U.S.C. 151 et seq., implementing section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1455), which requires a State or local government to approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(b) *Definitions.* Terms used in this section have the following meanings.

*Base Station.* A station at a specified site that enables wireless communication between user equipment and a communications network, including any associated equipment such as, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. It includes a structure that currently supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station. It may encompass such equipment in any technological configuration, including distributed antenna systems and small cells.

*Collocation.* The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

*Eligible Facilities Request.* Any request for modification of an existing wireless tower or base station involving:

(i) Collocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.

**Eligible Support Structure.** Any structure that meets the definition of a wireless tower or base station.

**Transmission Equipment.** Any equipment that facilitates transmission for wireless communications, including all the components of a base station, such as, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply, but not including support structures.

**Wireless Tower.** Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized license-exempt antennas and their associated facilities, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower. It includes structures that are constructed solely or primarily for any wireless communications service, such as, but not limited to, private, broadcast, and public safety services, as well as fixed wireless services such as microwave backhaul.

(c) A State or local government may not deny and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(d) A modification of an eligible support structure would result in a substantial change in the physical dimension of such structure if

(1) The proposed modification would increase the existing height of the support structure by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the proposed modification may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(2) The proposed modification would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(3) The proposed modification would involve adding an appurtenance to the body of the support structure that would protrude from the edge of the support structure more than twenty feet, or more than the width of the support structure at the level of the appurtenance, whichever is greater, except that the proposed modification may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the support structure via cable; or

(4) The proposed modification would involve excavation outside the current structure site, defined as the current boundaries of the leased or owned property surrounding the structure and any access or utility easements currently related to the site.

#### **PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES**

■ 4. The authority citation for part 17 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 309, 48 Stat. 1081, 1085 as amended; 47 U.S.C. 301, 309.

■ 5. Amend § 17.4 by revising paragraphs (c)(1)(v) and (vi); and add paragraph (c)(1)(vii) to read as follows:

##### **§ 17.4 Antenna structure registration.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(v) For any other change that does not alter the physical structure, lighting, or geographic location of an existing structure;

(vi) For construction, modification, or replacement of an antenna structure on Federal land where another Federal agency has assumed responsibility for evaluating the potentially significant environmental effect of the proposed antenna structure on the quality of the human environment and for invoking any required environmental impact statement process, or for any other structure where another Federal agency has assumed such responsibilities pursuant to a written agreement with the Commission. See § 1.1311(e) of this chapter; or

(vii) For any antenna structure that meets all of the following criteria:

(A) The antenna structure will be in use for no longer than 60 days;

(B) Construction of the antenna structure requires the filing of Form 7460-1 with the FAA;

(C) The antenna structure does not require marking or lighting pursuant to FAA regulations;

(D) The antenna structure will be less than 200 feet in height;

(E) The antenna structure will involve either no excavation or excavation where the depth of previous disturbance exceeds the proposed construction depth (excluding proposed footings and other anchoring mechanisms) by at least two feet; and

(F) Construction of the antenna structure does not require the filing of

an Environmental Assessment pursuant to § 1.1307 of this chapter.

\* \* \* \* \*

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BILLING CODE 6712-01-P

#### **DEPARTMENT OF TRANSPORTATION**

##### **National Highway Traffic Safety Administration (NHTSA)**

##### **49 CFR Part 592**

[Docket No. NHTSA-2013-0041; Notice 1]

RIN 2127-AL43

##### **Registered Importers of Vehicles Not Originally Manufactured To Conform to the Federal Motor Vehicle Safety Standards**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to clarify NHTSA regulations on registered importers (“RIs”) of motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards. The proposal would require RIs to certify to NHTSA, as appropriate, that an imported vehicle either is not required to comply with the parts marking requirements of the Theft Prevention Standard or that the vehicle complies with those requirements as manufactured, or as modified prior to importation. The proposal would replace text that was inadvertently omitted when the regulations were last revised.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than January 6, 2014.

**ADDRESSES:** Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process,