



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

**[WT Docket No. 17-79; FCC 17-153]**

**Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure**

**Investment**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission (Commission) eliminates historic preservation review of replacement utility poles that support communications equipment, subject to conditions that ensure no effects on historic properties. The Commission also consolidates historic preservation requirements in a single new rule.

**DATES:** Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order in WT Docket No. 17-79; FCC 17-153, adopted November 16, 2017, and released on November 17,

2017. The document is available for download at [http://fjallfoss.fcc.gov/edocs\\_public/](http://fjallfoss.fcc.gov/edocs_public/). The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

## **I. STREAMLINING THE HISTORIC PRESERVATION REVIEW PROCESS**

1. Enhancing the nation's wireless infrastructure is essential to meeting the exploding demand for robust mobile services and delivering the next generation of applications using transformative new network technologies. Review of deployment proposals pursuant to Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108, generally serves the public policy objective of preserving the nation's historic heritage. Not all infrastructure deployments, however, have the potential to affect historic properties. Where such potential effects do not exist, requiring an individual historic preservation review can impose needless burdens and slow infrastructure deployment.

2. Section 106 of the NHPA, 54 U.S.C. 306108, requires federal agencies to take into account the effect (if any) of their proposed undertakings on historic properties before proceeding with such undertakings. Agencies are responsible for deciding whether or not particular types of activities qualify as undertakings under the definitions in the regulations of the Advisory Council on Historic Preservation (ACHP). See 36 CFR 800.3(a), 800.16(y). Where an agency determines that a type of activity has no potential to affect historic properties under

any circumstances, the agency may unilaterally eliminate the review process for such undertakings. 36 CFR 800.3(a)(1).

3. In 2004, the Commission, the ACHP, and the National Conference of State Historic Preservation Officers agreed to the establishment of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings (2004 NPA). 47 CFR part 1. Of particular relevance here, the 2004 NPA excludes the construction of replacement structures from historic preservation review under defined conditions, but only if the structure being replaced meets the definition of a “tower,” meaning that it was constructed for the sole or primary purpose of supporting Commission-authorized antennas. See 47 CFR part 1, Appendix C, section III.B. A structure that does not qualify as a tower, such as a pole that initially was erected to support electric utility lines, does not fall within the exclusion under the 2004 NPA even if it is later used to support Commission-authorized antennas. Consequently, if such a pole must be replaced to support a communications antenna and no other exclusion applies, the pole replacement is subject to review.

4. In the Notice of Proposed Rulemaking in the present proceeding, the Commission initiated a broad examination of the regulatory impediments to wireless network infrastructure investment and deployment, and how we may remove or reduce such impediments, consistent with the law and the public interest, in order to promote the rapid deployment of advanced wireless broadband service to all Americans. See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment, 32 FCC Rcd 3330 (2017) (2017 Wireless Infrastructure NPRM) ; see also Proposed Rule, 82 FR 21761 (May 10, 2017). The Commission specifically sought comment on whether to expand the

categories of undertakings that are excluded from historic preservation review to include pole replacements, and whether such a step would facilitate wireless facility siting while creating no or foreseeably minimal potential for adverse impacts to historic properties. The Commission asked whether the construction of replacement poles should be excluded from Section 106 review, provided that the replacement pole is not substantially larger than the pole it is replacing, and solicited input on whether any additional conditions would be appropriate.

## **II. EXCLUSION FOR POLE REPLACEMENTS THAT HAVE NO POTENTIAL TO AFFECT HISTORIC PROPERTIES**

5. Pursuant to 36 CFR 800.3(a)(1), the Commission concludes that, in the circumstances specified below, replacement of a pole that was constructed with a sole or primary purpose other than supporting communications antennas with a pole that will support such antennas would have no potential to affect historic properties. The Commission therefore revises its rules to provide that the construction of such replacement poles will be excluded from Section 106 review when all the following conditions are met. First, paragraph (b)(3)(i) of the new rule provides that this new exclusion applies only if the original structure is a pole that can hold utility, communications, or related transmission lines; was not originally erected for the sole or primary purpose of supporting antennas that operate pursuant to a spectrum license or authorization issued by the Commission; and is not itself a historic property.

6. In addition, paragraph (b)(3)(ii)(A) specifies that, to qualify for this new exclusion, the replacement pole must be located no more than 10 feet away from the original pole, based on the distance between the centerpoint of the replacement pole and the centerpoint of the original pole; provided that construction of the replacement pole in place of

the original pole entails no new ground disturbance (either laterally or in depth) outside previously disturbed areas, including disturbance associated with temporary support of utility, communications, or related transmission lines. For purposes of paragraph (b)(3)(ii)(A), “ground disturbance” means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils.

7. Moreover, paragraph (b)(3)(ii)(B) of the new rule provides that a replacement pole qualifies for this exclusion only if its height does not exceed the height of the original pole by more than 5 feet or 10 percent of the height of the original pole, whichever is greater. Paragraph (c)(ii)(C) establishes that the appearance of such a replacement pole must be consistent with the quality and appearance of the original pole. Notably, antennas separately deployed on a replacement pole that is exempted under the rule adopted here remain subject to existing historic preservation rules about antenna deployments, including the exemptions for equipment that is limited in size set forth in 47 CFR part 1, sections VI.A.5, VII.B.2 & 3.

8. The Commission concludes that, where all of these conditions are met, the construction of a replacement utility pole—*i.e.*, a new pole in place of a preexisting pole that is being removed—will have no potential to affect historic properties (even assuming such properties are present), regardless of whether the original pole was built for the purpose of supporting communications equipment. The Commission further concludes that excluding such replacements from historic preservation review advances the public interest. The Commission has authority to take this step pursuant to 36 CFR 800.3(a)(1), which authorizes agencies to exclude undertakings that have no potential to affect historic properties from historic preservation review. Notably, for present purposes, the Commission does not revisit its

treatment of the construction of wireless communications structures, including replacement structures, as Commission undertakings.

9. The Commission anticipates that adoption of this exclusion will provide significant efficiencies in the deployment of replacement facilities. The record indicates that pole replacements are often required to support small cell facilities, which increasingly will be needed to support the rollout of next-generation services. Small cell antennas are much smaller and less obtrusive than traditional antennas mounted on macro cell towers, but a far larger number of them will be needed to accomplish the network densification that providers need, both in order to satisfy the exploding consumer demand for wireless data for existing services and in order to implement advanced technologies such as 5G. We find that excluding the pole replacements at issue here from review under section 106 of the NHPA will allow providers to complete these deployments more efficiently. In addition, creating an exclusion for replacement of utility poles will make more consistent the process that carriers and pole constructors must follow to comply with our historic preservation review requirements and those they must follow when building replacement poles that are subject to the requirements of other agencies applying the ACHP's 2017 Federal Lands Program Comment. See Advisory Council on Historic Preservation, Notice of Issuance of Program Comment for Communications Projects on Federal Lands and Property, 82 FR 23818 (May 24, 2017) (Federal Lands Program Comment).

10. In implementing large-scale network densification projects that require deployment of large numbers of facilities within a relatively brief period of time, use of existing structures, where feasible, can both promote efficiency and avoid adverse impacts on the

human environment. Utility poles may be an appealing option for such deployments, since they often are the appropriate height for small cell antennas and are ubiquitous in many metropolitan areas. When existing utility poles cannot support additional equipment, however, pole replacement is required. Wooden utility poles, in particular, frequently need to be replaced because of their age and condition. For example, over time, wooden poles typically begin to rot from the top, where additional antennas associated with small cell facilities are usually attached, and frequently need to be replaced to have sufficient strength to support additional attachments. A pole also may need to be replaced if it is not sturdy enough or if it lacks sufficient space to mount new small cell antennas above utility infrastructure already installed on the pole, such as electric cables, telephone lines, cable television wires, or other equipment.

11. Replacement poles placed in essentially the same previously disturbed locations as the original structures will be sturdier than the preexisting poles, but will not necessarily be substantially taller or occupy appreciably more space on or in the ground than the original poles. In those circumstances, there is no likelihood that such pole replacements could affect historic properties. Nonetheless, under current rules, only replacements for poles meeting the definition of a “tower” are excluded from Section 106 review while other types of pole replacements continue to require review. See 47 CFR part 1, section III.B. The Commission finds, consistent with some parties’ comments, that there is no valid reason to continue distinguishing between poles based on the purpose for which they were originally constructed, because the statutory test is whether a federal undertaking has a potential effect on historic properties, and is not based on the prior uses of a particular structure. The Commission also

finds that adopting an exclusion for replacement utility poles will promote greater consistency by providing similar treatment for similar replacement structures. The Commission expects that creating an additional exclusion for pole replacements will encourage providers to replace existing poles in previously disturbed areas rather than undertaking new construction activity that potentially could affect historic properties.

12. The Commission limits the replacement pole exclusion, as discussed below, to ensure that such pole replacements have no potential to affect historic properties. These limitations address the concerns raised by some parties about the potential effect of a broad, unlimited exclusion for replacement poles and ensure that the exclusion established in this rule satisfies the strict standard in the ACHP's rules. In adopting these conditions, we rely on, and incorporate, the Commission's and the ACHP's analyses in support of recent similar exclusions, including the exclusion of utility pole replacements in section VIII.B of the ACHP's 2017 Federal Lands Program Comment.

13. The new exclusion established here focuses only on utility pole replacements. Accordingly, paragraph (b)(3)(i)(A) of the rule describes the new exclusion using terminology consistent with that in section III.O of the Federal Lands Program Comment by referring to poles that "can hold utility, communications, or related transmission lines." Notably, section III.O of the Federal Lands Program Comment defines a "pole" as "a non-tower structure that can hold utility, communications, and related transmission lines;" paragraph (b)(3)(i)(A) of the Commission's new rule is similar, but uses the word "or" instead of the word "and," in order to clarify that this replacement pole exclusion extends to replacements where the original poles are capable of supporting any of the listed types of facilities, not necessarily all of them.

14. Paragraph (b)(3)(i)(B) makes clear that replacements for structures that section III.B of the 2004 NPA defines as “towers,” since that program alternative already sets forth the conditions under which replacement of towers will be excluded from review. See 47 CFR part 1, section III.B. And paragraph (b)(3)(i)(C) of the new rule makes clear that the construction of new poles to replace existing poles that themselves qualify as historic structures are not excluded from review.

15. The new rule’s limitations regarding location, size, quality, and appearance of replacement poles address the concerns raised by some Tribal Nations, State Historic Preservation Officers, and preservation advocates. Consistent with commenters’ concerns, the Commission finds that excluding replacement poles that are substantially larger than or that differ in other material ways from the poles being replaced might compromise the integrity of historic properties and districts. The Commission therefore excludes from historic preservation review only those replacement poles that are situated no more than ten feet away from the original pole; are no more than 10 percent or five feet taller than the original pole, whichever is greater; and are consistent with the quality and appearance of the original pole.

16. The provision limiting the exclusion to a new pole located no more than 10 feet from the original structure ensures that the new pole is truly a “replacement” and that the replacement will not substantially alter the setting of any historic properties that may be nearby. The Commission finds that the minimal change in location permitted here, which will make pole replacements easier to construct as a practical matter, creates no risk of effects on historic properties in light of the fact that no new ground disturbance will be permitted. Moreover, the Commission finds that the deployment of a replacement pole no more than 10

feet from the original pole has no potential to cause effects on historic properties that might be present, because of the close proximity to the original pole and the *de minimis* size increase permissible to fall into this exception. The Commission cannot reach the same conclusion, however, with regard to replacement poles placed a considerable distance (e.g., 30 feet) away from the originals.

17. For purposes of this new exclusion, we use a size definition that differs from the definition of “substantial increase in the size of the tower” in 47 CFR part 1, section 1.E.1 and in 47 CFR part 1, sections III.A and III.B, because that definition allows for increasing the height by either 10 percent or 20 feet plus the height of an antenna array, whichever is greater. Utility poles are typically 25 to 40 feet tall, and we find that an increase in height limited to 10 percent or five feet would be *de minimis* and thus would have no potential to affect historic properties. The flexibility of the five foot alternative addresses concerns expressed in the record that manufacturers typically offer standard utility poles in five-foot increments, and that a height increase of less than five feet often may be insufficient to accommodate new antennas or other equipment on a pole while maintaining the necessary separation from preexisting infrastructure on the pole.

18. The Commission cannot reach the same conclusion as to a height increase of 20 feet or more, however, because it cannot conclude at this time that a replacement pole that is so much taller than the preexisting structure would have no potential for effects on any historic properties that may be nearby, as is required under 36 CFR 800.3(a)(1) for an agency to act unilaterally. On the other hand, the Commission disagrees with the contention raised by some parties that allowing even small increases in height without historic preservation review

ultimately could have effects due to the possibility that multiple incremental replacements over time eventually would result in significantly larger poles. The Commission does not find this speculative concern persuasive: it is aware of no evidence of such repeated “stacked” replacements of utility poles occurring under existing program alternatives, and it believes the likelihood such activities will occur in the future is remote due to the substantial cost of removing and replacing poles.

19. The phrase “consistent with the quality and appearance of the originals” in paragraph (b)(3)(ii)(C) is imported from the corresponding exclusion in section VIII.B.3 of the *Federal Lands Program Comment*, to ensure that there can be no visual effects on any nearby historic properties. The Commission notes that a change in materials, such as replacing a wooden pole with a metal pole, is permissible so long as this standard is met.

20. The Commission adopts an additional limitation as part of paragraph (b)(3)(ii)(A) of the rule to ensure that the pole replacement project—including the removal of the original pole as well as construction of the replacement pole—will entail no new ground disturbance. This limitation recognizes that construction-related ground disturbance or excavation may affect properties that are historic due to the presence of archeological resources, including those of cultural or religious significance to a Tribal Nation or Native Hawaiian organization, which are included within the definition of historic property in 36 CFR 800.16(l)(1). The limitation on new ground disturbance outside previously disturbed areas, including disturbance associated with temporary support of lines, as well as the definition of “ground disturbance” as “any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils,” are taken directly from section III.I of the Federal Lands Program

Comment. The rule also specifies that the limitation on ground disturbance in previously undisturbed areas applies to increases in both depth and lateral disturbance.

21. The Commission continues to require that if, after construction commences, the party discovers any human or burial remains or other historic properties (despite the previous ground disturbance), construction must cease immediately, and the party must promptly notify and consult with the Commission, the State Historic Preservation Officer/Tribal Historic Preservation Officer, and any affected Tribal Nation or Native Hawaiian organization to evaluate the discovery and develop any appropriate measures to handle it. See 47 CFR part 1, section IX.A-D. Human or burial remains also must be handled in a manner consistent with any applicable State or Federal laws. Id., section IX.D.

22. All the conditions described above must be satisfied in order for a replacement pole to be excluded from historic preservation review. The Commission concludes that, taken together, these provisions will ensure protection for historic properties and guard against replacements that would be out of scale with preexisting utility poles in a particular area. By adopting this new exclusion subject to these limitations, the Commission continues to fulfill its statutory responsibilities regarding historic preservation, while removing an unnecessary impediment to the rapid deployment of sorely needed small cell facilities and other wireless infrastructure across the country.

### **III. CONFORMING AMENDMENTS AND REORGANIZATION OF HISTORIC PRESERVATION RULES**

23. In this order, the Commission also reorganizes existing historic preservation regulations into a single rule section that will be clearer, more accessible, and easier to

understand. Section 1.1307(a)(4) of the Commission's rules, 47 CFR 1.1307(a)(4), previously commingled detailed provisions implementing the historic preservation review process under section 106 of the NHPA with the provisions implementing the National Environmental Policy Act, 45 U.S.C. 4321-4355. To provide more clarity, the Commission is moving the historic preservation review provisions into a new rule, 47 CFR 1.1320, that more clearly sets forth the existing requirements governing that historic preservation review process; and within that rule, the Commission adopts a paragraph (b)(3) establishing the replacement utility pole exclusion described above.

24. The Commission finds that notice and comment are unnecessary and that it has good cause to make these clarifying revisions without expressly seeking comment on them. Except for paragraph (b)(3)'s addition of a pole replacement exclusion, new section 1.1320 makes no substantive changes to the existing requirements implementing the historic preservation review process under section 106 of the NHPA and adds no new obligations, but merely simplifies the way the Commission's regulations describe them by collecting existing requirements in one place and organizing them in a more straightforward fashion. Moreover, the delay engendered by a round of comment would be contrary to the public interest. The simpler presentation of our requirements in the new rule should make it easier for licensees and applicants to understand and comply with our historic preservation review requirements, and thus may expedite the completion of such review, thus facilitating more expeditious deployment of wireless infrastructure.

25. Paragraph (a) of the new rule incorporates into the Commission's rules the existing provisions in the ACHP's regulations (see, e.g., 36 CFR 800.1(a), 800.2(a), and 800.16(b))

& (y)) establishing that all federal agencies' undertakings with the potential to cause effects on historic properties are subject to review under Section 106 of the NHPA. There was no corresponding provision in the Commission's preexisting rules. At the same time, the Commission amends 47 CFR 1.1307(a)(4) to clarify that section 1.1320, as well as Section 106 of the NHPA, identify the historic preservation factors relevant to whether applicants must prepare environmental assessments of proposed actions.

26. Paragraphs (a)(1) and (a)(2) of the new section 1.1320 clarify the procedures that apply to historic preservation review of categories of undertakings. Paragraph (a)(1) clarifies that the ACHP's regulations (36 CFR 800.3–800.13) establish the default procedures that generally apply to Commission undertakings, unless the undertakings are subject to one of the Commission's program alternatives, such as those listed in paragraph (a)(2), in which case they are reviewed using the procedures described in the applicable program alternative.

27. Paragraph (b) of the new rule lists Commission undertakings that are not subject to any FCC historic preservation review process. Paragraph (b)(1) refers to undertakings for which an agency other than the Commission is the lead Federal agency that is primarily responsible for historic preservation review. Paragraph (b)(2) recognizes that the Commission's program alternatives not only establish streamlined procedures but also exempt some categories of undertakings from review. Paragraph (b)(3) of the new rule sets forth the new utility pole replacement exclusion adopted in this order, and paragraph (b)(4) of the new rule is identical to paragraph (a)(4)(ii) of section 1.1307 of the preexisting rules, setting forth the exclusion for the collocation of antennas and related equipment on buildings other than towers or utility poles. Paragraph (c) of the new rule provides that Commission applicants and

licensees are responsible for compliance with the historic preservation review procedures established in 47 CFR part 1, sections III-X. Paragraph (d) adopts definitions of the terms “antenna,” “applicant,” “collocation,” “tower,” and “undertaking” based on the preexisting definitions of these terms set forth, respectively, in 47 CFR part 1, section I.A; 47 CFR part 1, sections II.A.2, II.A.4, and II.A 14; and 36 CFR 800.16(y).

#### **IV. PROCEDURAL MATTERS**

##### **A. Final Regulatory Flexibility Analysis**

28. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

##### **1. Need for and Objectives of the Rules**

29. In the Order, the Commission adopts rules that streamline the process of deploying next-generation wireless broadband infrastructure by eliminating the need for historic preservation review pursuant to the National Historic Preservation Act (NHPA) in certain instances where there is no potential effect on historic properties. Specifically, the Commission finds that the construction of poles that can support antennas or other wireless communications equipment to replace pre-existing utility poles that are substantially identical, under specified conditions, has no potential to affect historic properties, and therefore, the historical preservation review process is unnecessary in this context. This order also reorganizes the rules governing the Commission’s historic preservation review procedures by bringing together provisions that previously were scattered across a variety of locations into a

single new Rule 1.1320, which clearly sets forth the existing requirements but, with the exception of the new exclusion for replacement utility poles, does not modify them.

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

30. No parties filed comments that specifically addressed the rules and policies proposed in the IRFA. One party—the Smart Cities and Special Districts Coalition—filed comments arguing that some small local governments, special districts, property owners, or small developers might be harmed if the Commission were to adopt certain policy changes discussed in the NPRM relating to (i) batches of zoning applications filed with state or local governments, (ii) the maximum reasonable time for state or local governments to process zoning applications (“shot clock” rules and “deemed granted” remedies), or (iii) limitations on proprietary properties or regulation of their use. The present order does not deal with any of the issues in the NPRM that the Smart Cities and Special Districts Coalition addressed in the cited portions of its comments. The Commission will address these comments when it acts on the relevant issues in a future order.

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

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

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

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

33. Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of

2007, there were approximately 1,621,215 small organizations. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.” Thus, the Commission estimates that most governmental jurisdictions are small.

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

35. The Commission’s own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly,

according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

36. Personal Radio Services. Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided for in other services. Personal radio services include services operating in spectrum licensed under part 95 of our rules. These services include Citizen Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service. There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. All such entities in this category are wireless, therefore the Commission applies the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which the SBA's small entity size standard is defined as those entities employing 1,500 or fewer persons. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. The Commission notes that many of the licensees in this category are individuals and not small

entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities that may be affected by our actions in this proceeding.

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

estimates that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

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

39. 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.

40. With respect to the first category, Profit-based Spectrum use, the size standards established by the Commission define “small entity” for MAS licensees as an entity that has average annual gross revenues of less than \$15 million over the three previous calendar years. A “Very small business” is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than \$3 million over the preceding three calendar years. The SBA has approved these definitions. The majority of MAS operators are licensed in bands where the Commission has implemented a geographic area licensing approach that requires the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission’s licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission’s licensing database indicates that, as of April 16, 2010, there were a total of 3,330 Economic Area market area MAS authorizations. The Commission’s licensing database also indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service. In 2001, an auction for 5,104 MAS licenses in 176 EAs was conducted. Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323

licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

41. With respect to the second category, Internal Private Spectrum use consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The applicable definition of small entity is the "Wireless Telecommunications Carriers (except satellite)" definition under the SBA rules. Under that SBA category, a business is small if it has 1,500 or fewer employees. For this category, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our action.

42. 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)).

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

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

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

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

receipts of under \$10 million, and 48 firms had receipts of \$10 million or more but less than \$25 million. Thus, the majority of these firms can be considered small.

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

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

this data, the Commission therefore estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

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

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

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

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

52. The Commission also notes, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission’s estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a “small

business,” an entity may not be dominant in its field of operation. The Commission further notes, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive.

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

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

years; a small business as an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding \$40 million for the preceding three years. These definitions were approved by the SBA. On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses. Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.

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

56. All Other Telecommunications. The “All Other Telecommunications” category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing

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

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

standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

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

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

60. As of March 1, 2017, the ASR database includes approximately 122,157 registration records reflecting a "Constructed" status and 13,987 registration records reflecting a "Granted, Not Constructed" status. These figures include both towers registered to licensees

and towers registered to non-licensee tower owners. The Commission does not keep information from which it can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require ASR registration, the Commission does not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners that would be subject to the rules on which the Commission seeks comment. Moreover, the SBA has not developed a size standard for small businesses in the category "Tower Owners." Therefore, the Commission is unable to determine the number of non-licensee tower owners that are small entities. The Commission believes, however, that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands, and that nearly all of these qualify as small businesses under the SBA's definition for "All Other Telecommunications." The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of \$32.5 million or less. For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million. Thus, a majority of "All Other Telecommunications" firms potentially affected by our action can be considered small. In addition, there may be other non-licensee owners of other wireless infrastructure, including Distributed Antenna Systems (DAS) and small cells, that might be affected by the measures on which the Commission seeks comment. The Commission does not have any basis for estimating the number of such non-licensee owners that are small entities.

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

61. The Commission is not imposing any additional reporting or record keeping requirements. Rather, as discussed in the next section, the Commission is reducing National Historic Preservation Act compliance burdens, including those on small entities, by eliminating the historic preservation review requirement for construction of replacement utility poles that are capable of supporting antennas or other wireless communications equipment and are substantially similar to the preexisting poles, subject to certain conditions. The Commission is also reorganizing the rules governing its historic preservation review procedures by consolidating them into a single new Rule 1.1320. This should clarify the rules and make compliance easier for small entities.

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

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

63. This Order streamlines the process of deploying next-generation wireless broadband by eliminating the need for historic preservation review for construction of

replacement utility poles in certain circumstances. The Commission anticipates that adoption of this replacement pole exclusion will provide significant efficiencies in the deployment of such facilities, particularly for small entities that may not have the compliance resources and economies of scale of larger entities, while still avoiding adverse impacts on historic properties. The exclusion will also make more consistent the process that carriers and pole construction companies must follow to comply with our historic preservation review requirements and those they must follow when building replacement poles that are subject to the requirements of other agencies pursuant to the Advisory Council on Historic Preservation's Program Comment for Communications Projects on Federal Lands and Property. By adopting this new exclusion, the Commission continues to fulfill our statutory responsibilities regarding historic preservation, while reducing the burden on small entities by removing unnecessary impediments to the rapid deployment of small cell facilities and other wireless infrastructure across the country.

64. Further, the Order incorporates the new exclusion for replacement poles into our rules in a manner that more clearly articulates licensees' and applicants' obligations not only as to this specific issue, but more generally as to the entire historic preservation review process. Thus, the Commission is reorganizing its existing regulations to clarify the general requirements regarding historic preservation review, as well as to specify the contours of the new exclusion. This simpler presentation of our requirements in the new rule should make it easier for licensees and applicants to understand and comply with our historic preservation review requirements, and thus may expedite the completion of such review and facilitate more

expeditious deployment of wireless infrastructure, further reducing the intrinsic cost and delay associated with such deployment.

65. As discussed above, the overall approach the Commission has taken is to remove regulatory requirements associated with NHPA compliance with respect to one specified category of undertakings and to simplify and clarify the existing requirements applicable in other contexts. In crafting this regulatory relief, the Commission has not identified any additional steps that it could take with respect to small entities that could not also be applied to all entities that construct or deploy wireless infrastructure. While the new exclusion for replacement utility poles is not specifically directed at small entities, the Commission recognizes that our actions in the Order can potentially decrease costs for all those subject to NHPA obligations, including small entities.

## **7. Report to Congress**

66. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Report and Order and FRFA (or summaries thereof) also will be published in the Federal Register.

### **B. Paperwork Reduction Act**

67. The Report and Order does not contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any substantive new or modified information collection

burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198; *see* 44 U.S.C. 3506(c)(4).

**C. Congressional Review Act**

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

**V. ORDERING CLAUSES**

69. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4(i), 7, 201, 301, 303, and 332 of the Communications Act of 1934, as amended 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 303, and 332, Section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(C), and Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108, that the Report and Order IS hereby ADOPTED.

70. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

71. IT IS FURTHER ORDERED that part 1 of the Commission's rules IS AMENDED, and that these changes SHALL BE EFFECTIVE **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**List of Subjects in 47 CFR part 1**

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

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,

Secretary.

Office of the Secretary.

## Final Rules

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

### **PART I – PRACTICE AND PROCEDURE**

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

Authority: 47 U.S.C. 151, 154(i), 155, 157, 225, 303(r), 309, 1403, 1404, 1451, and 1452.

2. Section 1.1307 is amended by revising paragraph (a)(4) to read as follows:

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

(a) \* \* \*

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places (see 54 U.S.C. 300308; 36 CFR parts 60 and 800), and that are subject to review pursuant to section 1.1320 and have been determined through that review process to have adverse effects on identified historic properties.

\* \* \* \* \*

3. Section 1.1320 is added to subpart I to read as follows:

**§1.1320 Review of Commission undertakings that may affect historic properties.**

(a) Review of Commission undertakings. Any Commission undertaking that has the potential to cause effects on historic properties, unless excluded from review pursuant to paragraph (b) of this section, shall be subject to review under section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. 306108, by applying—

(1) The procedures set forth in regulations of the Advisory Council on Historic Preservation, 36 CFR 800.3–800.13, or

(2) If applicable, a program alternative established pursuant to 36 CFR 800.14, including but not limited to the following:

(i) The Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended, Appendix B of this part.

(ii) The Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings, Appendix C of this part.

(iii) The Program Comment to Tailor the Federal Communications Commission’s Section 106 Review for Undertakings Involving the Construction of Positive Train Control Wayside Poles and Infrastructure, 79 FR 30861 (May 29, 2014).

(b) Exclusions. The following categories of undertakings are excluded from review under this section:

(1) Projects reviewed by other agencies. Undertakings for which an agency other than the Commission is the lead Federal agency pursuant to 36 CFR 800.2(a)(2).

(2) Projects subject to program alternatives. Undertakings excluded from review under a program alternative established pursuant to 36 CFR 800.14, including those listed in paragraph (a)(2) of this section.

(3) Replacement utility poles. Construction of a replacement for an existing structure where all the following criteria are satisfied:

(i) The original structure—

(A) Is a pole that can hold utility, communications, or related transmission lines;

(B) Was not originally erected for the sole or primary purpose of supporting antennas that operate pursuant to the Commission’s spectrum license or authorization; and

(C) Is not itself a historic property.

(ii) The replacement pole—

(A) Is located no more than 10 feet away from the original pole, based on the distance between the centerpoint of the replacement pole and the centerpoint of the original pole; provided that construction of the replacement pole in place of the original pole entails no new ground disturbance (either laterally or in depth) outside previously disturbed areas, including disturbance associated with temporary support of utility, communications, or related transmission lines. For purposes of this paragraph, “ground disturbance” means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils;

(B) Has a height that does not exceed the height of the original pole by more than 5 feet or 10 percent of the height of the original pole, whichever is greater; and

(C) Has an appearance consistent with the quality and appearance of the original pole.

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

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

(ii) One of the following criteria is met:

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

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

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

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

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

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

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

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

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

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

(3) The pre-existing antenna was not deployed pursuant to the exclusion in this paragraph,

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

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

(iii) The new antenna complies with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage or concealment requirements;

(iv) The deployment of the new antenna involves no new ground disturbance; and

(v) The deployment would otherwise require the preparation of an Environmental Assessment under 1.1304(a)(4) solely because of the age of the structure.

NOTE 1 TO PARAGRAPH (b)(4): A non-visible new antenna is in the “same vicinity” as a pre-existing antenna if it will be collocated on the same rooftop, façade or other surface. A visible new antenna is in the “same vicinity” as a pre-existing antenna if it is on the same rooftop, façade, or other surface and the centerpoint of the new antenna is within ten feet of the centerpoint of the pre-existing antenna. A deployment causes no new ground disturbance when the depth and width of previous disturbance exceeds the proposed construction depth and width by at least two feet.

(c) Responsibilities of applicants. Applicants seeking Commission authorization for construction or modification of towers, collocation of antennas, or other undertakings shall take the steps mandated by, and comply with the requirements set forth in, Appendix C of this part, sections III-X, or any other applicable program alternative.

(d) *Definitions.* For purposes of this section, the following definitions apply:

Antenna means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission

authorization, for the 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. For most services, an antenna will be mounted on or in, and is distinct from, a supporting structure such as a tower, structure or building. However, in the case of AM broadcast stations, the entire tower or group of towers constitutes the antenna for that station. For purposes of this section, the term antenna does not include unintentional radiators, mobile stations, or devices authorized under part 15 of this title.

Applicant means a Commission licensee, permittee, or registration holder, or an applicant or prospective applicant for a wireless or broadcast license, authorization or antenna structure registration, and the duly authorized agents, employees, and contractors of any such person or entity.

Collocation means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.

Tower means 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 as defined herein.

Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of the Commission, including those requiring a Commission permit, license or approval. Maintenance and servicing of towers, antennas, and associated equipment are not deemed to be undertakings subject to review under this section.

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