



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 17-79; DA 19-1024]

Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure

Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (Commission) repeals a section of the Commission's rules implementing the small wireless facilities exemption and deletes a cross-reference to that section contained elsewhere in the Commission's rules.

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

FOR FURTHER INFORMATION CONTACT: Belinda Nixon, Belinda.Nixon@fcc.gov, of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, 202-418-1382.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in WT Docket No. 17-79; DA 19-1024, adopted and released on October 8, 2019. The complete text of this document is available for download at http://fjallfoss.fcc.gov/edocs_public/. The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities

(Braille, large print, electronic files, audio format), send an email to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

1. In *United Keetoowah Band of Cherokee Indians v. FCC*, No. 18-1129, 2019 WL 3756373 (D.C. Cir Aug. 9, 2019) (*United Keetoowah*), the U.S. Court of Appeals for the District of Columbia Circuit vacated those portions of the Commission's 2018 *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (Second Report and Order)*, 83 FR 19440, May 3, 2018, that exempted certain small wireless facilities from federal environmental and historic preservation review. Pursuant to F. R. App. P. 41(b), the court issued its mandate on October 7, 2019. Consistent with the court's mandate, this *Order* repeals the section of the Commission's rules implementing the small wireless facilities exemption and deletes a cross-reference to that section contained elsewhere in the Commission's rules.

2. The Bureau finds that notice and comment are unnecessary for these rule amendments under 5 U.S.C. 553(b), because this ministerial order merely implements the mandate of the United States Court of Appeals for the District of Columbia Circuit, and the Commission lacks discretion to depart from this mandate.

3. Accordingly, IT IS ORDERED that § 1.1312(e)(2) of the Commission's rules, 47 CFR 1.1312(e)(2), IS REPEALED and § 1.6002, 47 CFR 1.6002, is amended as set forth in Appendix A of the *Order*, effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

4. This action is taken pursuant to sections 4(i), 4(j), 5(c), 303, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(c), 303 and 309(j) and § 0.331(d) of the Commission's rules, 47 CFR 0.331(d).

5. The Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are major under the Congressional Review Act, 5 U.S.C. 804(2). The Bureau will send a copy of this *Order* to Congress and

the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A). The Bureau finds good cause to make this rule effective earlier than 60 days after the *Order* is submitted to Congress and the Government Accountability Office, pursuant to 5 U.S.C. 808(2), because this ministerial order merely implements the mandate of the United States Court of Appeals for the District of Columbia Circuit, and the Commission lacks discretion to depart from this mandate.

List of Subjects in 47 CFR Part 1

Communications equipment, Environmental protection, Historic preservation, Radio, Telecommunications.
Federal Communications Commission.

Amy Brett,
Associate Chief, Competition and Infrastructure Policy Division,
Wireless Telecommunications Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47

CFR part 1 as follows:

PART 1 – PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Section 1.1312 is amended by revising paragraph (e) to read as follows:

§ 1.1312 Facilities for which no preconstruction authorization is required.

* * * * *

(e) Paragraphs (a) through (d) of this section shall not apply to the construction of mobile stations.

3. Section 1.6002 is amended by revising paragraph (l) to read as follows:

§ 1.6002 Definitions.

* * * * *

(l) *Small wireless facilities* are facilities that meet each of the following conditions:

(1) The facilities—

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

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

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

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

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

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

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

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

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