



FEDERAL COMMUNICATIONS COMMISSION

47 CFR part 1

[WT Docket No. 19-71; FCC 21-10; FRS 17395]

FCC Modernizes Siting Rule for Small Hub and Relay Wireless Antennas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communication’s Commission (“Commission”) updates its rule for over-the-air reception devices (OTARD) to expand its coverage to include hub and relay antennas that are used for the distribution of broadband-only fixed wireless services to multiple customer locations, regardless of whether they are primarily used for this purpose, provided the antennas satisfy other conditions of the OTARD rule. The *Report and Order* will allow fixed wireless service providers to bring faster Internet speeds, lower latency, and advanced applications to rural and underserved communities in particular.

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. 19-71, FCC 21-10, adopted on January 7, 2021 and released on January 7, 2021. The full text of this document is available for public inspection online at <https://docs.fcc.gov/public/attachments/FCC-21-10A1.pdf>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format, etc.), and reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) may be requested by sending an email to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Synopsis

1. The Commission in this document updates its rule for over-the-air reception devices (OTARD) to expand its coverage to include hub and relay antennas that are used for the distribution of broadband-only fixed wireless services to multiple customer locations, regardless of whether they are primarily used for this purpose, provided the antennas satisfy other conditions of the rule.¹ By making this modest adjustment to the Commission’s rule while maintaining the other existing OTARD restrictions, it places fixed wireless broadband-only service providers on similar competitive footing with other service providers. This rule change should allow fixed wireless service providers to bring faster Internet speeds, lower latency, and advanced applications—like the Internet of Things, telehealth, and remote learning—to all areas of the country, and to rural and underserved communities in particular.

2. The Commission’s OTARD rule prohibits laws, regulations, or restrictions imposed by State or local governments or private entities that impair the ability of antenna users to install, maintain, or use over-the-air reception devices. The Commission adopted the rule as directed by section 207 of the Telecommunications Act of 1996, pursuant to the Commission’s authority under section 303 of the Communications Act of 1934. The rule prohibits restrictions that unreasonably delay or prevent installation, maintenance, or use of an antenna; unreasonably increase the cost of installation, maintenance, or use of an antenna; or preclude reception of an acceptable quality signal. For the OTARD rule to apply, the antenna must be installed “on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property” upon which the antenna is located.

3. The original OTARD rule applied only to antennas used to receive video programming signals, but in the *2000 Competitive Networks First Report and Order* the Commission expanded the rule to apply to “customer-end antennas used for transmitting or receiving fixed wireless signals.” The Commission found that unreasonable restrictions on the placement of customer premises antennas disadvantage providers of fixed wireless services as compared to their wireline competitors and

¹ The Commission notes that the scope of the revisions in this *Report and Order* is limited and that it declines to adopt at this time any of the other proposals submitted by commenters or advanced by the Commission in its *Notice of Proposed Rulemaking*. See, e.g., Letter from Claude Aiken, President and CEO, WISPA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 27, 2018); *Updating the Commission’s Rule for Over-the-Air Reception Devices*, WT Docket No. 19-71, Notice of Proposed Rulemaking, 34 FCC Rcd 2695 (2019) (*Notice*).

unreasonably discriminated among providers of functionally equivalent services. The Commission defined fixed wireless signals as “any commercial non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location.” The Commission stated that the extension of the OTARD rule would apply “only to antennas at the customer end of the wireless transmission, i.e., to antennas placed at the customer location for the purpose of providing fixed wireless service . . . to one or more customers at that location.” The Commission reasoned that these antennas were customer premises equipment and that section 332 of the Communications Act did not act as a bar to OTARD protection because the antennas were not used to provide personal wireless services. The Commission concluded that it did “not intend the rules to cover hub or relay antennas used to transmit signals to and/or receive signals from multiple customer locations.”

4. In its *2004 Competitive Networks Reconsideration Order*, the Commission revised its previous finding and determined that the OTARD rule applies to hub and relay antennas that are “installed in order to serve the customer on such premises,” but that it does not apply to hub and relay antennas designed “*primarily*” for use as hubs for distribution of service to multiple customer locations. The Commission’s reconsideration responded to a petition from a licensee that “deploy[ed] its networks using a ‘point-to-point-to-point’ architecture in which each customer device also serv[ed] as a relay device.” The Commission, noting that it had not considered “those network configurations and technologies in which customer-end equipment performs both functions” and offered “advanced services,” found that, “[f]or the purposes of the OTARD protections, the equipment deployed in such networks shares the same physical characteristics of other customer-end equipment, distinguished only by the additional functionality of routing service to additional users.” The Commission “[did] not believe that [the Commission’s] rules should serve to disadvantage more efficient technologies.” The Commission consequently found that “the OTARD protections would apply to installations serving the premises customer that also relays signals to other customers, such as is typical in mesh networks, but would not apply to installations that are designed primarily for use as hubs for distribution of service.”

5. In 2018, the Wireless Internet Service Providers Association (WISPA) asked the Commission to update the OTARD rule to apply to “all fixed wireless transmitters and receivers, regardless of whether the equipment is used for reception, transmission, or both, so long as the equipment

meets the existing size restrictions for customer-end equipment.” WISPA argues that extending the OTARD rule to all fixed wireless equipment “would be consistent with the original intent of OTARD, will accelerate the deployment of competitive broadband services in markets across the country, and will empower consumers to help bring competitive wireless broadband to their communities by hosting hub sites.”

6. WISPA asserts that updating the OTARD rule is necessary to accommodate changes in fixed wireless architecture. While fixed wireless systems historically relied on relatively large coverage areas with fewer hub sites per customer, “over time, as both the cost of technology fell and subscriber data increased, fixed wireless providers began to reduce the size of the area covered per base station.” Because of these changes in technology and network design, WISPA contends, “fixed wireless providers have much less choice in where they can locate hub sites.” WISPA further contends that, “in the absence of Commission action to modernize the OTARD rules, fixed wireless operators will continue to face significant hurdles to siting, perpetuating barriers to new investment and employment.” WISPA further argues that the Commission originally declined to extend OTARD protections to hub sites based on “its opinion at the time that fixed wireless hubs were covered under section 332” of the Communications Act—an opinion that WISPA says does not apply to modern networks because hub sites used for fixed wireless broadband do not necessarily include an offering of telecommunications service.

7. In response to WISPA’s letter, the Commission issued a Notice of Proposed Rulemaking (*Notice*) seeking comment on extending the OTARD protections to fixed wireless facilities that operate primarily as hub and relay antennas, but do not qualify as personal wireless service facilities under section 332(c)(7) because they are not used to provide telecommunications services. In this *Report and Order*, the Commission updates the OTARD rule to reflect the current technological landscape by eliminating the restriction that excludes some hub and relay antennas from the scope of the OTARD protections if they are used primarily for the distribution of service to multiple customer locations. In the *2004 Competitive Networks Reconsideration Order*, the Commission determined that customer-end equipment possessing “the additional functionality of routing service to additional users” (such as a node in a mesh network) would not lose OTARD protection, so long as the equipment was “installed in order to serve the customer on [its] premises,” but that it “would not apply to installations that are designed primarily for use as hubs

for distribution of service.”

8. The revised OTARD rule applies to all hub and relay antennas that are used for the distribution of fixed wireless services to multiple customer locations, regardless of whether they are “primarily” used for this purpose, as long as: (1) the antenna serves a customer on whose premises it is located, and (2) the service provided over the antenna is broadband-only.² The Commission’s order here does not modify any other aspects of the current OTARD rule. Thus, the rule’s requirements that antennas must be less than one meter in diameter or diagonal measurement, that they apply to property “where the user has a direct or indirect ownership or leasehold interest,” and that restrictions necessary for safety and historic preservation are excepted, remain in place.

9. *Policy Considerations.* The Commission finds that this limited expansion of the OTARD rule to fixed wireless hub and relay antennas will align the Commission’s rules with the current fixed wireless technological landscape and accelerate the deployment of competitive fixed wireless services to consumers. The record supports the conclusion that the fixed wireless technologies have shifted from using larger antennas that transmit over greater distances—that were in use at the time the Commission adopted the hub and relay antenna restriction—to the use of smaller antennas that are located much closer to each other. As numerous commenters emphasize, today’s fixed wireless networks rely on smaller antennas located in close proximity to each other. Even in rural areas, these networks are deployed in this way so as to increase broadband capacity. These smaller antennas meet the OTARD size restriction, but some are excluded from OTARD protection due to their “primary” function as fixed wireless hub and relay antennas. If these antennas continue to be excluded from OTARD protection, this could prevent fixed wireless service providers from maintaining or expanding service, particularly broadband-only service, as changes in technology require more dense deployments.

10. The Commission’s updated rule will help spur the rapid deployment of fixed wireless networks needed for 5G and other fixed wireless high-speed Internet services. This will benefit consumers by offering faster access to advanced communications services and greater competition among service providers. These fixed wireless networks rely on the installation of hub and relay antennas to

² Accordingly, the Commission amends 47 CFR § 1.4000 by revision subparagraph (a)(1) and adding subparagraph (a)(5) to reflect its clarification to the definition of hub and relay antennas.

transmit and receive signals from multiple customer locations to overcome propagation distance limitations and signal obstructions in delivering fixed wireless high-speed Internet services. Further, modern fixed wireless antennas are multi-purpose, and can function as receivers, repeaters, and transmitters, thereby eliminating the distinction between fixed wireless hub and relay antennas that the Commission previously relied on in deciding to exclude some of these antennas from OTARD protection. As long as the antennas meet the other requirements of the Commission's rule, its revised rule applies equally to all fixed wireless antennas, no matter whether they operate primarily as receivers, hubs, or relays, or whether they operate on licensed or unlicensed spectrum. There is no longer any reason to maintain the definitional distinction in the Commission's rule between these types of antennas and, accordingly, the Commission eliminates it.³

11. The Commission's revision will increase competitive parity among fixed wireless service providers and other service providers. Specifically, broadband-only fixed wireless service providers that use this equipment will now be on similar footing as service providers whose services and facilities (specifically those offering telecommunications services and commingled services) qualify for protections under sections 253 and 332. And it will facilitate the offering of advanced services to consumers by expanding deployment options and reducing costs for fixed wireless service providers. Without this change, broadband-only fixed wireless service providers will continue to face significant hurdles to siting, perpetuating barriers to new investment and deployment. In taking this action, the Commission embraces its longstanding policy objective of promoting competition among broadband and video providers and giving consumers, including those in rural and remote areas, more choices among wireless providers, products, and services.

12. The record illustrates that fixed wireless service providers face unreasonable barriers to deployment. The Commission is not persuaded by the claim of Local Governments and Municipal Organizations that there is no evidence that zoning or private restrictive covenants have hindered the deployment of fixed wireless hub and relay antennas, nor by their argument that WISPA has offered only

³ This decision is an extension of long-standing Commission precedent to apply to antennas used to supply unlicensed services so long as the antenna is placed on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property.

anecdotal examples of zoning restrictions and private restrictive covenants that have impacted the installation of hub and relay antennas. Rather, based on the totality of the record, the Commission finds that local zoning laws and reviews have discouraged the deployment of modern hub and relay antennas and that extending OTARD to cover this equipment will significantly advance deployment.

13. The Commission's expanded application of the OTARD rule to additional fixed wireless hub and relay antennas protects against restrictions that result in unreasonable delays or prevent the installation, maintenance or use of this equipment. Starry, a fixed wireless broadband-only provider, estimates that, if its base stations are covered by OTARD, it can activate 25% to 30% more sites in the coming year, which should enable it to pass more than one million additional homes. Starry asserts that across all its markets it takes on average 100 days to complete the permitting process for a single base station, which accounts for about 80% of the time that it spends in activating a site. Another fixed wireless Internet service provider, Wisp.net, initially provided service only to tenants in the building where its antenna was located. It subsequently was denied a permit to operate a wireless hub and relay facility to provide fixed wireless service to customers outside the range of Wisp.net's original footprint. Many consumers filed comments with the Commission claiming that Wisp.net was their only option for receiving service and urging the Commission to grant Wisp.net's petition to expand the OTARD rule for hub and relay antennas. Similarly, WISPA provides several examples of where zoning or private homeowner restrictive covenants have hindered the deployment of fixed wireless hub and relay antennas. By updating OTARD, the Commission provides fixed wireless broadband providers protection from unreasonable delays in the installation of fixed wireless hub and relay antennas or the unreasonable prevention of such installations or deployments.

14. The record also shows that restrictions in the application of the current rule to hub and relay antennas have raised costs for fixed wireless providers, which incur excessive permitting costs. Az Airnet, a wireless Internet service provider in Arizona, asserts that in some jurisdictions the same permit fee applies to both a major cellular tower and a small Internet relay site. New Wave, a wireless Internet service provider operating in rural Illinois, claims that unreasonably high permit fees prohibit it from expanding its service. Az Airnet, New Wave, and other fixed wireless service providers will now be protected from unreasonable fees. Section 1.4000(a)(3)(ii) provides that a law, regulation, or restriction

impairs installation, maintenance, or use of fixed wireless hub and relay antennas if it unreasonably increases the cost of installation, maintenance, or use of the equipment. Further, section 1.4000(a)(4) provides that “[a]ny fee or cost imposed on a user by a rule, law, regulation, or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction’s treatment of comparable devices.” The Commission’s expanded application of the OTARD rule extends these protections against unreasonable fees to the installation of all covered customer premises equipment, even equipment whose primary purpose is to serve as hub and relay antennas. The expanded application of this rule will allow fixed wireless service providers to install such equipment more quickly, efficiently, and at reduced cost, which should reduce construction timelines.

15. The revised OTARD rule provides fixed wireless service providers with greater certainty and predictability because it prohibits restrictions that impair the installation, maintenance, or use of covered antennas. Google states that municipal zoning laws and community association rules not only have the potential to delay or impede antenna installation, but also have the potential to discourage service expansion due to a lack of certainty and predictability. Likewise, OUTFRONT asserts that fixed wireless service providers face uncertain delays and costs due to local regulations that impact their ability to deploy networks efficiently by using all available sites. The protections the Commission adopts in this document provide broadband-only service providers with the certainty and predictability they need to build out and deploy fixed wireless networks.

16. The Commission’s revised rule also enhances the ability of fixed wireless service providers to deliver reliable high speed Internet access to a greater number of unserved or underserved customers. WISPA cites a number of examples where the limits of the existing OTARD rule have precluded the provision of fixed wireless broadband service to areas where access is limited or non-existent. Common, a wireless Internet service provider offering service in the San Francisco Bay Area, maintains that expanding the OTARD rule will enable it to deploy more quickly on residential rooftops to serve more people in suburban neighborhoods that do not otherwise have service. Wav Speed, a wireless Internet service provider, claims that extending the OTARD rule to cover all fixed wireless hub and relay antennas will allow it to serve customers in areas where reliable high speed Internet is unavailable or inconsistent, providing customers with the educational, vocational, and entertainment benefits that a

modern Internet connection permits. Az Airnet asserts that there “is a vast public need, especially in rural areas, for the use of small rooftops, or towers to bring Internet service to those that cannot currently get it, or can only get substandard service.” Ionia, a wireless Internet service provider serving rural Ionia County, Michigan, and surrounding areas, observes that “[z]oning and landlord restrictions prevent the installation of equipment that would allow the relay of fixed wireless signals to nearby residents.” Ionia indicates that modifying the OTARD rule to allow the placement of antennas at a customer’s property “would allow WISPs to provide high speed broadband services to customers that currently cannot be reached by other means due to terrain or vegetation.” MJM Telecom states that it is hampered by current state and local regulations and has “turned down thousands of potential customers due to the fact that [it] cannot put up a small relay hub site allowing them to receive these services.” By extending the protections of the OTARD rule to fixed wireless hub and relay antennas, the Commission promotes rural prosperity by enabling efficient, modern communications among rural households, businesses, schools, libraries, healthcare centers, and other important community institutions.

17. The record also indicates that updating the OTARD rule will enable consumers to access competing video programming providers. Consumers increasingly stream video services over the Internet, instead of consuming such programming through traditional video programming services such as cable or broadcast. As WISPA indicates, the primary benefit of fixed wireless antennas is to secure viewers’ access to broadband service, which is the world’s largest distributor of video programming services, including those of traditional television stations and networks. INCOMPAS agrees that updating OTARD to take into account the need for hub and relay antennas for broadband via fixed wireless networks will benefit consumers with better online video distribution. CTIA provides additional evidence that consumers are increasingly relying on wireless services for video streaming, citing an NTIA Internet Use Survey indicating that the proportion of Internet users watching video online has grown from 45% in 2013 to 70% in 2017. CTIA explains that video streaming across wireless networks requires multiple antennas to receive programming, including antennas that connect to other antennas or serve other customer locations. Reducing restrictions on the use of fixed wireless hub and relay equipment is therefore consistent with the OTARD rule’s original goal of increasing consumer access to video programming services.

18. The Commission emphasizes that its revision is narrow in scope and that it maintains the other existing OTARD restrictions.⁴ For the OTARD rule to apply, the antenna must be installed “on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property” upon which the antenna is located. The OTARD provisions also apply only to those antennas measuring one meter or less in diameter or diagonal measurement. In addition, the OTARD rule is subject to an exception for State, local, or private restrictions that are necessary to accomplish a clearly defined, legitimate safety objective, or to preserve prehistoric or historic places that are eligible for inclusion on the National Register of Historic Places, provided such restrictions impose as little burden as necessary to achieve the foregoing objectives, and apply in a nondiscriminatory manner throughout the regulated area. Given that the OTARD rule only applies to antennas meeting the rule’s size restriction and only to antennas placed in areas where the antennas’ user has exclusive use or control, the Commission’s rule revisions will minimize any potential visual impact on properties, which some commenters raise.

19. The Commission finds the opponents’ arguments unpersuasive. First, the Commission continues to recognize property owners’ rights under the OTARD rule. Because the Commission maintains the “exclusive use or control” and “direct or indirect ownership or leasehold interest” restrictions, fixed wireless service providers will still need to negotiate agreements with appropriate parties for the placement of their antennas in areas where the property owner or lessee has exclusive use or control. Contrary to the assertion of MBC and Real Estate Associations, this change does not undermine access negotiations. Rather, the revision expands OTARD protections to a larger class of agreements negotiated by property owners and lessees, in that the rule will cover more fixed wireless equipment than was previously allowed. For example, the new rule would not apply to the placement of hub and relay antennas on a building rooftop unless the building owner is a customer of the provider, or unless a customer other than the building owner already has a leasehold right to rooftop space and the

⁴ The Commission also notes that installations under the OTARD rule may not constitute an “existing wireless tower or base station” for purposes of section 6409(a) of the Spectrum Act of 2012. *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, Title VI, § 6409(a), 126 Stat. 156, 232-33 (Feb. 22, 2012) (codified at 47 U.S.C. § 1455(a)); 47 C.F.R. § 1.6100(b)(5). Such installations may not have been reviewed and approved under the local zoning or siting process, or under another state or local regulatory review process, and therefore future modifications of these installations may not qualify for section 6409(a) streamlined treatment.

placement is within that customer's exclusive use and control. In the former circumstance, to the extent that the concern is that application of the rule would prevent a building owner from charging a market-based rate for placement of a hub antenna on the rooftop, the Commission notes that will not be the case.⁵ The revised rule will not treat service providers as "antenna users," and their agreements with building owners therefore would be subject to OTARD protection only if the building owner is itself a customer. Further, in that case, OTARD would serve to protect the antenna placement from third-party restrictions and would not limit the right of a provider and building owner customer to freely negotiate the terms of antenna placement in an area within the building owner's exclusive use or control. If the provider wishes to place a device within the leasehold premises of a rooftop tenant, the placement would not intrude on the building owner's property rights since the placement would be located within an area the building owner has already provided the tenant with a contractual right to occupy. In addition, fixed wireless hub and relay antenna manufacturers and service providers that use this equipment must continue to comply with other applicable Commission regulations, such as RF emissions requirements.⁶

20. The Commission finds that potential economic costs of its rule change raised by commenters are both speculative and negligible. LMC claims that the installation of the new antennas contemplated in the *Notice* "would dramatically change the aesthetic of a neighborhood and be in contrast with their established character." First, although there is no "aesthetics exception" under the OTARD rule, commenters have not provided factual support explaining how the Commission's update to the rule would cause these harms. Further, the Commission maintains the existing restrictions in the OTARD rule that impose limits on the dimensions and location of equipment, so the visual appearance of the hub and relay equipment and antennas are the same as those deployments already covered under the OTARD rule.

⁵ The Commission therefore disagrees with the National Multifamily Housing Council's claim that the "proposed amendments would grant wireless carriers and any other entity that leases rooftop space the right to install fixed wireless equipment without paying any more in rent or amending any other lease terms." NMHC Dec. 3, 2020 *Ex Parte* Letter at 2. The *Report and Order* continues to recognize property owners' rights under the OTARD rule, and rooftop deployments remain unaffected in most circumstances.

⁶ Fixed wireless providers are subject to equipment authorization rules that require radio frequency (RF) devices to operate effectively without causing harmful interference. RF devices must be properly authorized under 47 CFR Part 2 prior to being marketed or imported in the United States. Fixed wireless providers that use unlicensed spectrum are subject to Part 15 rules governing unlicensed operation. Part 15 of the Rules allows devices employing low-level RF signals to operate without individual licenses, provided that their operation causes no harmful interference to licensed services and the devices do not generate emissions or field strength levels greater than a specified limit.

Relatedly, NATOA claims that, “[f]reed from the current obligation that the antenna be used for the owner or tenant to receive services, a property owner or tenant could affix an unlimited number of antennas anywhere on its property.” That claim is misplaced, as the Commission’s rule revision requires that an antenna must be deployed in a location where the customer has exclusive use or control.

Moreover, the customer fixed wireless devices, including the antennas, are small, and a provider may only need a few additional units to relay the signals in different directions, if and where applicable. In addition, the Commission’s revision leaves unchanged the OTARD rule’s exemption and waiver frameworks, which permit limiting antenna installations for specific reasons. Finally, the Commission maintains the historical preservation exception in the OTARD rule, which limits installations of fixed wireless hubs and relays antennas under certain circumstances. In these circumstances, the Commission determines that the limited adjustment adopted here is appropriate.

21. The Commission also finds that other arguments raised by commenters are unfounded. MBC argues that any revision to the OTARD rule would cast uncertainty on “tens of thousands” of existing rooftop antenna leases. The Commission’s revision is narrowly focused on hub and relay antennas that presently are not covered by OTARD and, therefore, rather than disrupting commercial and residential lease transactions, it should encourage parties to negotiate more lease transactions in the future. The rule will not affect existing rooftop leases unless the antenna placement is located in an area within the exclusive use and control of a customer, in which case the parties to the placement agreement would be the provider and the customer. The OTARD rule does not affect the provider-customer relationship; rather, it prohibits certain public and third-party restrictions on placements located at the customer’s premises. If a property owner is the customer, then the terms of the placement will be freely negotiable without limitation by the OTARD rule. Similarly, contrary to Oklahoma Cities’ claims, it is implausible that the Commission’s changes will spur such a large increase in exploitative contracts between service providers and homeowners and renters that new consumer protections are necessary, especially because providers might be enticed to offer consumers discounts to meet the new wording of the OTARD rule. Local jurisdictions, however, can rely on the provisions of sections 1.4000(a)(3) and (4) and the safety provisions of subsection (b)(1) to protect the public as long as their rules meet the standards of these sections. Taking into consideration all of the above, the Commission finds that the

clear economic benefits of the rule change outweigh the negligible, and in some cases unfounded, economic costs.

22. *Legal Authority.* In the *Notice*, the Commission proposed to rely on the legal authority the Commission originally relied on in the *2000 Competitive Networks First Report and Order* in extending the application of the OTARD rule to antennas used in connection with fixed wireless services. The Commission noted that it in 2000 assumed all hub sites were “personal wireless service facilities” covered by section 332(c)(7) of the Act—defined by the Act to include only facilities that provide “telecommunications services”—and therefore beyond the scope of the Commission’s OTARD provisions. The Commission indicated that this assumption no longer appeared accurate. The Commission therefore sought comment on extending relief to those relay antennas and hub sites that are not “telecommunications services” and/or “personal wireless service facilities”—i.e., those that fall into the gap between the Commission’s current OTARD provisions and the protections of sections 253 and/or 332(c)(7) of the Act, and those that WISPA claims are needed for modern high-speed broadband wireless networks.

23. The Commission finds that modifying the OTARD rule is necessary for the effective exercise of its spectrum management authority under Title III of the Communications Act. Specifically, the Commission finds that section 303 of the Act provides authority for the Commission to modify the OTARD rule as it applies to fixed wireless devices.

24. Congress has specifically recognized that section 303 provides authority to the Commission to adopt OTARD rules. While the directive in section 207 of the 1996 Act mandated the exercise of the Commission’s Title III authority only to certain kinds of video programming, section 207 directed the Commission to address such video programming using its existing authority under section 303. Specifically, section 207 states that “[w]ithin 180 days after the date of enactment of this Act, the Commission shall, pursuant to section 303 of the Communications Act of 1934, promulgate regulations to prohibit restrictions that impair a viewer’s ability to receive video programming services through devices designed for over-the-air reception” As the Commission recognized in extending the OTARD rule to fixed wireless services in the *2000 Competitive Networks First Report and Order*, “this statutory language reflects Congress’ recognition that, pursuant to section 303, the Commission has always

possessed authority to promulgate rules addressing OTARDs.” The Commission has used its section 303 authority to limit State and local regulation of the placement of antennas both before and after section 207 was enacted.

25. Courts have held that the Commission’s statutory authority pursuant to Title III is broad. The Commission’s authority under section 303 allows it, when necessary to serve the public interest, to allocate spectrum for specific uses, adopt rules governing services that use spectrum as well as rules applicable to antennas and other apparatus, and take action to encourage the larger and more effective use of spectrum. More generally, the Commission may “[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of” the Act. Fixed wireless service providers offer services using spectrum and are subject to the Commission’s rules governing the use of spectrum.⁷ Evidence in the record shows that fixed wireless service providers seek to broaden their offerings of competitive broadband Internet access services but are subject to State, local and private restrictions that increase the costs associated with deploying service and dampen investment. The record shows that modifying the OTARD rule to allow wireless Internet service providers to deploy necessary infrastructure more readily will serve the public interest and promote larger and more efficient use of spectrum by increasing siting opportunities for wireless Internet service providers, decreasing costs associated with deploying needed infrastructure, and encouraging wireless Internet service providers to deploy broadband Internet access services in additional areas across the country.⁸

⁷ For example, among other requirements, fixed wireless providers, are subject to equipment authorization rules that require radio frequency (RF) devices to operate effectively without causing harmful interference. RF devices must be properly authorized under 47 CFR Part 2 prior to being marketed or imported in the United States. Fixed wireless providers that use unlicensed spectrum are subject to Part 15 rules governing unlicensed operation. Part 15 of the Rules allows devices employing low-level RF signals to operate without individual licenses, provided that their operation causes no harmful interference to licensed services and the devices do not generate emissions or field strength levels greater than a specified limit. Fixed wireless providers also are subject to current OTARD requirements.

⁸ This exercise of the Commission’s Title III authority will thus further promote the Commission’s statutory mission of “mak[ing] available, so far as possible, to all of the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges,” and “encourag[ing] the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity . . . measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.” 47 U.S.C. 151, 1302(a). Based on the Commission’s findings regarding its authority under Title III of the Act, the Commission rejects National Multifamily Housing Council’s argument that the Commission has no statutory authority to revise the OTARD rule.

26. Several commenters argue that the Commission cannot rely on the authority it relied on previously to modify the OTARD rule because the Commission's determinations regarding its authority in the *2000 Competitive Networks First Report and Order* were based on an "outdated ancillary jurisdiction analysis." The Commission acknowledges that the Commission's *Competitive Networks Order* was issued prior to the D.C. Circuit's decision in *Comcast v. FCC*, 600 F.3d 642 (D.C. Cir. 2010), which rejected the Commission's reliance on ancillary authority in the absence of any express delegation of authority. Nevertheless, the Commission's action here is based on its well recognized broad authority under Title III (most specifically section 303).⁹

27. The Commission's action also is consistent with the requirements imposed upon the Commission in RAY BAUM'S Act. RAY BAUM'S Act requires the Commission, in the Communications Marketplace Report, to assess the state of competition in the communications marketplace, assess the state of deployment of communications capabilities, and to assess whether laws, regulations, regulatory practices or demonstrated marketplace practices pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services. It also requires the Commission to describe how it will address "the challenges and opportunities in the communications marketplace that were identified through the assessments."

28. The Commission also disagrees with commenters who argue that the Commission lacks authority to modify the OTARD rule because hub and relay antennas are already governed by section 332 of the Act. Commenters such as the Municipal Organizations and Local Governments point out that, in the *2000 Competitive Networks First Report and Order*, the Commission found that hub and relay antennas were outside the scope of customer-end equipment covered by the OTARD rule. The Municipal Organizations argue that because hub and relay antennas are covered under section 332(c)(7), no other

⁹ Moreover, the Commission's action is reasonably ancillary to its express authority to manage the radio spectrum and related apparatus. 47 U.S.C. 154(i), 303(r). Section 4(i) provides that "[t]he Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." Section 303(r) authorizes the Commission to "[m]ake such rules . . . as may be necessary to carry out the provisions of this the Act." As noted above, the Commission's modest expansion of the existing application of the OTARD rules to additional hub and relay antennas is necessary to address the kinds of substantial obstacles to deployment of Title III services described above. See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 172-78, 180-81 (1968). The decision will also provide a level-playing field for broadband-only fixed wireless providers which lack the regulatory protections in this regard available only to their competitors under sections 253 and 332. See *Mobile Communications Corp. of America v. FCC*, 77 F.3d 1399 (D.C. Cir. 1996).

provision of the Act may “support an action that ‘limit[s] or affect[s] the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of’ these facilities.” To the contrary, the Commission finds that section 332(c)(7) does not bar it from modifying the OTARD rule because it does not apply to antennas used in connection with the broadband-only services many fixed wireless providers offer.

29. Evidence in the record shows that wireless Internet service providers use hub and relay antennas to provide services that do not fall within the scope of services covered under section 332(c)(7). With certain exceptions, section 332(c)(7) provides for limited federal preemption of State and local zoning restrictions “that prohibit or have the effect of prohibiting” “the provision of ‘personal wireless service.’” “Personal wireless service” is defined under section 332(c)(7) to mean “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.” “Unlicensed wireless service” in turn, is defined under section 332(c)(7) to mean “the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services” Section 253 similarly provides for limited federal preemption of state and local statute or regulations that “prohibit or have the effect of prohibiting” “the ability of any entity to provide any interstate or intrastate telecommunications service.”

30. Many fixed wireless providers offer broadband-only services that are outside the scope of these provisions. In this *Report and Order*, the Commission takes action to address those hub and relay antennas that are used in connection with the provision of broadband-only services that fall into the gap between its current OTARD provisions and the protections of sections 332(c)(7) and 253 of the Act. In response to the request from WISPA for clarification about whether the Commission’s prior sections 253 and 332 interpretations cover their offering of commingled services, the Commission reiterates what it already decided and the Ninth Circuit Court of Appeals affirmed: the scope of Commission preemption over commingled services is covered by sections 253 and 332 of the Act and its implementing regulations. Expansion of the OTARD rule to cover commingled services thus is unnecessary. Accordingly, this *Report and Order* does not address hub or relay antennas that are used for such commingled services, other than to point out that they are covered for preemption purposes under sections 253 and 332 of the Act.

31. The Commission also rejects arguments that revising the OTARD rule as described herein would constitute a taking. The Community Associations Institute (CAI) argues that “a rule allowing commercial communications equipment to be sited on common property without the association’s explicit consent is a compelled physical occupation of such property” and that such a rule “would constitute a taking for which compensation must be made.” The Real Estate Associations contend that while the revised rule would not say so on its face, its practical effect would be to “give fixed wireless providers the ability to install and operate equipment without the consent of the owner of the property.” They contend that, even though the hub or relay antenna might serve the needs of the end-user customer, it would “also have other features that meet only the needs of the third-party service provider” and argue that requiring property owners to accept the installation of such equipment would potentially equate to forced acquiescence to subleasing to fixed wireless service providers and would therefore violate the Fifth Amendment’s prohibition on takings. The Commission disagrees that the revision to the OTARD rule that it adopts in this *Report and Order* would cause such results. The OTARD rule does not permit service providers to install hub and relay antennas on common property without a property owner’s consent. The modification the Commission adopts is narrow and eliminates only the restriction that currently excludes some hub and relay antennas from the scope of the existing OTARD provisions. It does not change any other aspect of the current OTARD rule, including the requirement that, for the OTARD rule to apply, the antenna must be installed “on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property.” A tenant may allow a wireless service provider to place a hub or relay antenna on property that is within the tenant’s exclusive use or control where the tenant has a direct or indirect ownership or leasehold interest in the property.

32. In originally extending the OTARD rule to fixed wireless services, the Commission considered and rejected similar arguments that the OTARD rule would constitute a taking and concluded that, “there is no constitutional impediment to the Commission forbidding restrictions on the placement of antennas on property within the tenant user’s exclusive use, where that user has an interest in the property.” The Commission reiterated its explanation from the *OTARD Second Report and Order* that the OTARD rule “did not effect a taking of the premises owner’s property within the meaning of the Fifth

Amendment because by leasing his or her property to a tenant, the property owner voluntarily and temporarily relinquishes the rights to possess and use the property and retains the right to dispose of the property.” In *Building Owners and Managers Ass’n Inter. v. FCC*, 254 F.3d 89 (D.C. Cir. 2001), the D.C. Circuit upheld the Commission’s extension of OTARD protection to the placement of antennas on leased premises, rejecting the claim that the action effected a per se taking “because it enlarges the tenant’s rights beyond the contractual provisions of the lease, thereby stripping landowners of property rights that they rightfully reserved” The court held that “the landlord affected by the amended OTARD rule will have voluntarily ceded control of an interest in his or her property to a tenant” and having done so “thereby submits to the Commission’s rightful regulation of a term of that occupation.” (*Ibid*) The Commission is not convinced that its decision creates a Fifth Amendment takings issue, or that the broad categories of covered activities cited in *BOMA* should be restricted, simply because installation of the hub and relay equipment might result in the end user receiving money or other compensation in exchange for installation of the equipment on the premises. Consistent with and for the reasons outlined in the Commission’s previous determinations, it concludes that revising the OTARD rule as described herein does not constitute a taking. A taking does not occur in such cases because, by leasing property to the tenant, the property owner has voluntarily and temporarily relinquished the right to possess and use the property and has instead given those rights to the tenant.

33. The Commission also rejects arguments premised on the generalized concerns about the Commission’s RF safety limits and that incrementally revising the OTARD rule would somehow violate people’s right to bodily autonomy or their property-based right to “exclude” wireless radiation emitted by third parties from their home or would violate the Americans with Disabilities Act or the Fair Housing Act by imposing radiation on individuals in their homes. Revising the OTARD rule does not change the applicability of the Commission’s radio frequency exposure requirements, and fixed wireless providers must ensure that their equipment remains within the applicable exposure limits. What is more, in 2019, the Commission declined to initiate a rulemaking to revise its RF emission exposure limits. The Commission therefore rejects certain commenters’ concerns that the OTARD rule revisions will generally lead to unsafe RF exposure levels.

34. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),

requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities.

35. *Paperwork Reduction Act.* This document does not contain an information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it does not contain any 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.

36. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

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

FINAL REGULATORY FLEXIBILITY ANALYSIS

38. 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 (Notice)* released in April 2019. The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

39. In the *Report and Order*, the Commission updates its rule for over-the-air reception devices (OTARD) to include hub and relay antennas that are used for the distribution of fixed wireless services to multiple customer locations, regardless of whether they are primarily used for this purpose, so

long as the antennas serve a customer on whose premises they are located. This change is necessitated by the shift away from larger antennas spread over greater distances to 5G wireless networks with dense deployment requirements. Today's fixed wireless networks rely on smaller antennas located in close proximity to each other. These smaller antennas meet the OTARD size restriction but are excluded from OTARD protection due to their function. By updating the OTARD rule to include these antennas, the Commission recognizes the shift in the fixed wireless infrastructure landscape.

40. The shift in the types of service provided by fixed wireless service providers also prompts the need for this rule change. Specifically, these service providers' offerings are no longer commingled with telecommunications services and therefore would not otherwise receive protection from one of the Commission's preemption schemes. In this regard, the Commission's actions level the playing field for fixed wireless broadband service providers so that they are better able to compete with other service providers that already receive protection from the Commission's OTARD rule or other preemption scheme. By making this modification, the Commission places fixed wireless broadband providers on similar footing with other service providers and expands siting options for fixed wireless hub and relay antennas. These changes will reduce costs and construction timelines for new fixed wireless sites. They will also provide for alternative locations for fixed wireless hub and relay antennas to be installed and remove market barriers for fixed wireless services that otherwise would exist. Additionally, the changes adopted in the *Report and Order* will enhance the development of broadband services and further the Commission's efforts to address the digital divide by helping to bring faster Internet speeds, lower latency, and advanced applications like the Internet of Things (IoT), telehealth, and remote learning to rural and underserved areas, as well as throughout the United States.

B. Summary of Significant Issues Raised by Public Comments in Response to the Interim Regulatory Flexibility Analysis

41. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

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

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

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

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

44. 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 and adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

45. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission’s actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) 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 30.7 million businesses.

46. 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.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were

approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

47. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

48. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA 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 3,117 firms that operated for the entire year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

49. *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 Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 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.

50. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by its actions. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed 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.

51. *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.

52. 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 it seeks comment. Moreover, the SBA has not developed a size standard for small businesses in the category "Tower Owners." Therefore, the Commission is unable to determine the number of non-licensee tower owners that are small entities. The

Commission believes, however, that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands. In addition, there may be other non-licensee owners of other wireless infrastructure, including Distributed Antenna Systems (DAS) and small cells that might be affected by the measures on which the Commission seeks comment. The Commission does not have any basis for estimating the number of such non-licensee owners that are small entities.

53. The closest applicable SBA category is All Other Telecommunications, and the appropriate size standard consists of all such firms with gross annual receipts of \$3 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999. Thus, under this SBA size standard a majority of the firms potentially affected by the Commission's action can be considered small.

54. *Lessors of Residential Buildings and Dwellings.* This industry comprises establishments primarily engaged in acting as lessors of buildings used as residences or dwellings, such as single-family homes, apartment buildings, and town homes. Included in this industry are owner-lessors and establishments renting real estate and then acting as lessors in subleasing it to others. The establishments in this industry may manage the property themselves or have another establishment manage it for them. The appropriate SBA size standard for this industry classifies a business as small if it has \$27.5 million or less in annual receipts. U.S. Census Bureau 2012 data for Lessors of Residential Buildings and Dwellings show that there were 42,911 firms that operated for the entire year. Of that number, 42,618 firms operated with annual receipts of less than \$25 million per year, while 142 firms operated with annual receipts between \$25 million and \$49,999,999 million. Therefore, based on the SBA's size standard the majority of Lessors of Residential Buildings and Dwellings are small entities.

55. *Property Owners' Associations.* This industry comprises establishments formed on the behalf of individual property owners, to make collective decisions based on the wishes of a majority of owners. This includes associations formed on behalf of individual residential condominium owners or homeowners. These associations may provide overall management, publish a telephone directory of the owners, sponsor seasonal events for the owners, establish and collect funds to operate the project, enforce

rules and regulations, settle differences of opinion among residents, and make other decisions that are vital to the owners. Associations formed on behalf of individual real estate owners or tenants that provide no property management, but which arrange and organize civic and social functions are included here as well. This industry falls within the category of, “*Other Similar Organizations (except Business, Professional, Labor, and Political Organizations)*” under the U.S. Census Bureau’s NAICS classification system. The SBA small business size standard for this industry classifies a business as small if it has \$8 million or less in annual receipts. U.S. Census Bureau 2012 data for this industry show that there were 18,347 firms that operated for the entire year. Of that number, 17,818 firms operated with annual receipts of less than \$5 million per year, while 382 firms operated with annual receipts between \$5 million and \$9,999,999 million. Therefore, based on the SBA’s size standard the majority of Property Owners’ Associations are small firms in this industry.

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

56. The revisions to the OTARD rule do not impose any new or additional reporting, recordkeeping, or other compliance obligations. However, the number of entities subject to the rule’s protections may expand because of the Commission’s actions. The revisions also will not require small entities to hire attorneys, engineers, consultants, or other professionals to comply with the rule changes. Instead, the Commission expect the changes adopted in the *Report and Order* will have a beneficial impact on small entities. More specifically, the revisions will allow small fixed wireless providers to install fixed wireless hub and relay antennas more quickly and efficiently and at lower cost by expanding the class of providers whose antennas are subject to regulatory protections, although the Commission cannot quantify the magnitude of these cost savings. Further, the OTARD rule revisions will reduce construction timelines for new fixed wireless sites and reduce barriers to entry, which may result in more small entities utilizing the OTARD rule’s protections and installing fixed wireless equipment.

57. By ensuring that State, local, and private restrictions do not delay or impede the installation of fixed wireless hub or relay antennas, the Commission’s actions will benefit small as well as other fixed wireless providers by creating more siting opportunities and spurring investment in and deployment of wireless infrastructure. Communications services will become more readily available in

unserved, underserved, and rural areas furthering the Commission's efforts to address the digital divide.

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

58. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or 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.”

59. In the *Report and Order*, the Commission revises its OTARD rule to expand its coverage to include hub and relay antennas that are used for the distribution of fixed wireless services to multiple customer locations, regardless of whether they are primarily used for this purpose, so long as the antennas serve a customer on whose premises they are located. By revising the OTARD rule to reflect the current technological landscape, the Commission's actions should reduce the economic impact for small entities that deploy fixed hub and relay antennas by reducing the costs and time associated with the deployment of such infrastructure.

60. Comments filed by the Wireless Internet Service Providers Association (WISPA) which represents fixed wireless providers –including small providers serving rural and underserved areas, supports the Commission's revision of the OTARD rule stating that, “[e]xtending the OTARD rules to fixed wireless hub and relay antennas would spur infrastructure deployment, including deployment of networks that involve local relaying in rural and other underserved areas and deployment by small providers.” MJM Telecom a small Internet service provider and WISPA member indicated that under the current OTARD rules, “[w]e have had to turn down thousands of potential customers due to the fact that we cannot put up a small relay hub site[.]” and requested that the Commission adopted the revision to the OTARD rules proposed in the *Notice* and adopted in the *Report and Order*. With the OTARD rule change, the Commission has removed hurdles to siting which imposed barriers to entry, investment and deployment for fixed wireless providers which is a major step to level the playing field for these

providers. Reduced costs and removal of barriers to entry coupled with the opportunity for expansion into unserved and underserved service areas and increased customer revenues for fixed wireless providers hold the promise of a beneficial economic impact for small entities.

61. Some commenters have concerns about an increase in certain costs—such as aesthetics (*e.g.*, too many antennas on a property) and disruption of existing contracts between wireless providers and property owners. These commenters argued that the current OTARD rule should be maintained. In considering these arguments, the Commission determined that the demonstrable economic benefits of the rule outweigh the economic costs, which are negligible to the extent such costs can be substantiated. First, the revision will enhance the ability of small and other fixed wireless service providers to deliver reliable high speed Internet access to a greater number of unserved or underserved customers. And there will be fewer restrictions on the antennas that customers nationwide will be able to place on a property they control. The OTARD rule revision will also protect small and other fixed wireless broadband providers from unreasonable delays in the installation of fixed wireless hub and relay antennas or the unreasonable prevention of such installations or deployments. It will also provide small and other fixed wireless service providers with protections against unreasonable fees for the installation of hub and relay antennas. Further, the prohibition against restrictions that impair the installation, maintenance or use of covered antennas will provide small and other fixed wireless providers certainty and predictability. In addition, the Commission determined that the revision will promote competition by allowing more small and other fixed wireless providers to deploy in areas where it would not otherwise be economically feasible and to serve underserved communities such as rural areas, which is consistent with Commission policy and in the public interest.

62. The National Association of Telecommunications Officers and Advisors (“NATOA”), the National League of Cities (“NLC”), and the National Association of Regional Councils (“NARC”), jointly (the “Municipal Organizations”) who members include small local governments, cities, and towns, opposed the OTARD rule change and provided some alternative suggestions, which they claim will “help achieve [the Commission’s] goal of improved broadband availability.” However, these alternatives—which the Municipal Organizations provide in the context of arguing that the Commission lacks authority to promulgate its revisions—are beyond the scope of this proceeding. In addition, these alternatives are

not mutually exclusive with the actions that the Commission takes in the *Report and Order*.

63. Moreover, with regard to some of the concerns raised by the Municipal Organizations, the Commission emphasizes that, while the *Report and Order* removes the primary use restriction on fixed wireless hub and relay antennas, it maintains the other existing OTARD restrictions. For the OTARD rule to apply, the antenna must be installed “on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property” upon which the antenna is located. Further, the OTARD provisions apply only to those antennas measuring one meter or less in diameter or diagonal measurement. In addition, the OTARD rule is subject to an exception for State, local, or private restrictions that are necessary to accomplish a clearly defined, legitimate safety objective, or to preserve prehistoric or historic places that are eligible for inclusion on the National Register of Historic Places, provided such restrictions impose as little burden as necessary to achieve the foregoing objectives, and apply in a nondiscriminatory manner throughout the regulated area. Given that the Report and Order preserves the restrictions on the physical dimensions and location of equipment, the rule revisions will minimize any potential visual impact on properties, which some commenters raise. The hub and relay equipment installed will resemble the equipment already covered under the OTARD rule.

64. Finally, the Report and Order continues to recognize property owners’ rights under the OTARD rule. Because it maintains the “exclusive use or control” and “direct or indirect ownership or leasehold interest” restrictions, fixed wireless service providers will still need to negotiate agreements with appropriate parties for the placement of their antennas. In addition, fixed wireless hub and relay antenna manufacturers and service providers that use this equipment must continue to comply with other applicable Commission regulations, such as mast and RF emissions requirements. This places hub and relay antennas under the same kinds of restrictions as other equipment subject to OTARD protections. Localities and property owners can continue to rely on these provisions for their protection. Accordingly, the Commission’s actions in the *Report and Order* removing the restriction on fixed wireless hub and relay antennas while retaining the other existing OTARD restrictions, strikes the appropriate balance to minimize the economic impact for fixed wireless providers, localities and property owners who are small entities.

ORDERING CLAUSES

65. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 201(b), 202(a), 205, 251, 253, 303, 316, 332, and 1302 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 202(a), 205(a), 251, 253, 303, 316, 332, and 1302 and section 207 of the Telecommunications Act of 1996, Pub. L. No. 104-104, § 207, 110 Stat. 56, 114 that this *Report and Order* IS ADOPTED.

66. IT IS FURTHER ORDERED THAT section 1.4000 of the Commission's rules IS AMENDED as specified in the Final Rules, and such rule amendments shall be effective 30 days after the date of publication of the text thereof in the Federal Register.

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

List of Subjects in 47 CFR part 1

Administrative practice and procedures, Communications equipment, Telecommunications.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene Dortch,
Secretary.

Final Rules

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

PART 1 – PRACTICE AND PROCEDURE

Subpart S – Preemption of Restrictions That “Impair” the Ability To Receive Television Broadcast Signals, Direct Broadcast Satellite Services, or Multichannel Multipoint Distribution Services or the Ability To Receive or Transmit Fixed Wireless Communications Signals

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, unless otherwise noted.

2. Amend § 1.4000 by revising paragraphs (a)(1)(i)(A) and (ii)(A) and adding paragraph (a)(5) to read as follows:

§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

(a)(1) * * *

(i) * * *

(A) Used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, including a hub or relay antenna used to receive or transmit fixed wireless services that are not classified as telecommunications services, and

* * * * *

(ii) * * *

(A) Used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, including a hub or relay antenna used to receive or transmit fixed wireless services that are not classified as telecommunications services, and

* * * * *

(5) For purposes of this section, “hub or relay antenna” means any antenna that is used to receive or transmit fixed wireless signals for the distribution of fixed wireless services to multiple customer locations as long as the antenna serves a customer on whose premises it is located, but excludes any hub or relay antenna that is used to provide any telecommunications services or services that are provided on a commingled basis with telecommunications services.

* * * * *

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